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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 258

ALBERT E. SCHWABACHER, ALBERT E. SCHWABACHER, JR., JAMES M. SCHWABACHER, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED AUGUST 12, 1947.

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Record from D. C. U. S., Eastern District of Virginia	1	1
Caption (omitted in printing)	1	
Complaint	1	1
Exhibit 1-A—Decision and order of the Interstate Commerce Commission approving merger	7	5
Exhibit 1-B—Letter of May 23, 1947 to the Interstate Commerce Commission from intervenors requesting stay of effective date of order of April 1, 1947	49	69
Exhibit 1-C—Letter of May 27, 1947 to the Interstate Commerce Commission from applicants requesting denial of application for stay of effective date of order of April 1, 1947	51	70
Order convening three-judge court	59	78
Proxy statement and agreement of merger of Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company	61	78
Exhibit "A"—Agreement of merger	76	101

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 29, 1947.

—3075

Record from D. C. U. S., Eastern District of Virginia—Continued
Proxy statement and agreement of merger of Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company—Continued
Exhibits—Continued | Original | Print
Exhibit "B"—Map showing lines of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Co. | 93 | 132
Exhibit "C-1"—General balance sheet as of December 31, 1945 of The Chesapeake and Ohio Railway Co. | 94 | 133
Exhibit "C-2"—General balance sheet as of December 31, 1945 of Pere Marquette Railway Company | 98 | 139
Exhibit "C-3"—Consolidated general balance sheet as of December 31, 1945 of The Chesapeake and Ohio Railway Co. | 102 | 144
Exhibit "C-4"—Income statement for the year 1945 of The Chesapeake and Ohio Railway Company | 104 | 150
Exhibit "C-5"—Income statement for the year 1945 of Pere Marquette Railway Company | 105 | 152
Exhibit "C-6"—Combined income statement for the year 1945 of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Company | 106 | 155
Exhibit "C-7"—Income account for calendar years 1930 to 1945 of The Chesapeake and Ohio Railway Company | 108 | 158
Exhibit "C-8"—Income account for calendar years 1930 to 1945 of Pere Marquette Railway Coompany | 110 | 158
Exhibit "C-9"—Consolidated income account for years 1930 to 1945 of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Company | 112 | 158
Exhibit "C-10"—Statement of surplus for years 1941 to 1945 of The Chesapeake and Ohio Railway Company | 114 | 159
Exhibit "C-11"—Statement of surplus for years 1941 to 1945 of Pere Marquette Railway Company | 115 | 160
Exhibit "C-12"—Capitalization as of December 31, 1945 of The Chesapeake and Ohio Railway Company | 116 | 160
Exhibit "C-13"—Capitalization as of December 31, 1945 of Pere Marquette Railway Company | 117 | 160
Exhibit "C-14"—Securities owned December 31, 1945 by The Chesapeake and Ohio Railway Company | 118 | 161

	Original	Print
Record from D. C. U. S., Eastern District of Virginia—Continued		
Proxy statement and agreement of merger of Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company—Continued		
Exhibits—Continued		
Exhibit "C-15"—Securities owned December 31, 1945 by Pere Marquette Railway Company	121	167
Exhibit "C-16"—Market prices of stocks of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Company	123	171
Exhibit "C-17"—Statement showing details of proposed issue and exchange of capital stock of The Chesapeake and Ohio Railway Company for capital stock of Pere Marquette Railway Company	123	172
Exhibit "C-18"—Securities of Chesapeake, Pere Marquette Railway Company, and Alleghany Corporation, etc.	124	173
Exhibit "D"—Excerpts from Sections 3822-a and 3822-b of the Code of Virginia of 1919, as amended	126	175
Motion of Chesapeake and Ohio Railway Company, et al., for leave to intervene	129	181
Motion of Chesapeake and Ohio Railway Company, et al., to dismiss	131	182
Order granting motion to intervene	132	183
Motion of Herbert G. Wellington, et al., for leave to intervene	133	183
Answer of Herbert G. Wellington, et al.	138	186
Motion of Sterling Grace & Company, et al., for leave to intervene	144	190
Motion of Sterling Grace & Company, et al., to dismiss	146	191
Order allowing Sterling Grace & Company, et al., to intervene	147	192
Reporter's transcript of proceedings	151	193
Caption and appearances	151	193
Colloquy between Court and counsel	152	193
Statement of Mr. Cooper	157	197
Mr. Hickey	172	206
Mr. Kunkel	185	213
Mr. Gibson	190	217
Mr. Shields	221	235
Mr. Turney	234	243
Mr. Hitt	237	245
Reply statement of Mr. Cooper	239	246
Colloquy between Court and counsel	247	251
Opinion, Dobie, J.	252	254
Order denying temporary stay	254	256
Final judgment	255	257

	Original	Print
Record from D. C. U. S., Eastern District of Virginia—Continued		
Petition for appeal	256	257
Order allowing appeal	257	258
Cost bond (omitted in printing)	258	
Assignment of errors	259	259
Citations on appeal (omitted in printing)	261	
Notices to Attorneys General	287	260
Designation of record	296	262
Designation by Chesapeake and Ohio Railway Company as to record on appeal	315	265
Clerk's certificate (omitted in printing)	316	
Statement points to be relied upon and designation of parts of the record to be printed	317	266
Order noting probable jurisdiction	318	267

[fol. 1] [Caption omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 713

ALBERT E. SCHWABACHER, ALBERT E. SCHWABACHER, JR., James H. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, and John L. Schwabacher, Plaintiffs,

vs.

UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION, Defendants

COMPLAINT—Filed May 29, 1947

The plaintiffs respectfully state to the Court and allege:

I

This action arises under the provisions of the Interstate Commerce Act, as amended, (Sections 5 (2) and 20 (a)) and [fol. 2] Sections 24, 208, and 209 of the Judicial Code (U. S. C. Title 28, Sections 41, 45, and 46) and has for its purpose the enjoining, suspending and setting aside of a Decision and Order of the Interstate Commerce Commission entitled "Finance Docket No. 15228, Pere Marquette Railway Company Merger, Etc.," dated April 1, 1947, as hereinafter more fully appears, and hence is within the jurisdiction confided to this Court by the laws hereinabove referred to. The Decision and Order referred to above are attached hereto as Exhibit 1-A.

II

1. Plaintiffs, Albert E. Schwabacher, Albert E. Schwabacher, Jr., James H. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, John L. Schwabacher and Albert E. Schwabacher and May K. Schwabacher (as trustees under the Joseph Koshland Trusts) are the owners of 2100 shares of 5% Cumulative Preferred stock of Pere Marquette Railway Company.

2. On March 8, 1946, the Chesapeake & Ohio Railway Company, the Pere Marquette Railway Company and the

Alleghany Corporation applied to the Interstate Commerce Commission for authorization and approval of a merger agreement under the terms of the Interstate Commerce Act, as amended, and specifically to take the following action:

(a) Under section 5(2) of said Act, for merger of the properties and franchises of the Pere Marquette into the Chesapeake & Ohio for ownership, management, and operation;

(b) Under section 312 of said Act, for transfer to the Chesapeake & Ohio of the certificate authorizing operation by the Pere Marquette as a common carrrier by water;

(c) Under section 20a of said Act, for issuance by the Chesapeake & Ohio of certain securities, and assumption by it of obligation and liability in respect of securities of the Pere Marquette and of the Toledo Terminal Railroad Company, a Pere Marquette affiliate, in connection with the proposed merger; and

(d) Under section 5(2) of said Act, for acquisition by the Alleghany of control, through the Chesapeake & Ohio, of the properties and franchises of the Pere Marquette, and of the Pere Marquette's interests in subsidiary of affiliated carriers and in leaseholds, contract rights to operate, and trackage rights over or joint use of the railroad lines of such companies and of certain other carriers.

[fol. 3] 3. Believing the proposed merger agreement unfair to the holders of Pere Marquette preferred stock and lacking in provisions otherwise to protect their interests, plaintiffs have refused to become a party to the proposed agreement of merger. Plaintiffs also have intervened in the proceeding before the Interstate Commerce Commission on the proposed application of merger and has taken the position that the proposed agreement is unfair to the Cumulative Preferred shareholders as well as dissenting shareholders from the proposed plan and that the Commission has a legal obligation to protect their rights in approving the proposed application.

4. On or about November 16, 1946, the Proposed Report of the Bureau of Finance, Interstate Commerce Commis-

sion, was issued tentatively approving the application of merger. In this Report the rights of dissenting shareholders were ignored and no conditions were attached to the approval requiring the applicants to protect the rights of plaintiffs or others in the same position. To this Proposed Report, plaintiffs filed exceptions upon intervention pointing out that the rights of dissenting shareholders were no where given protection either by the applicants or the Commission.

5. On or about April 1, 1947, the Commission, through its Division 4, issued its final Order approving the plan of merger as substantially set forth in its earlier Report. Plaintiffs filed a Motion for rehearing before the full Commission on May 1, 1947. The effective date of the Order of Division 4 was postponed by the Commission until it could pass upon plaintiffs' Motion. (Exhibit 1-B). On May 20, 1947, the Commission denied plaintiffs' Motion for rehearing with a stipulation that its Decision and Order would become effective 15 days thereafter. (Exhibit 1-C).

6. Section 5(2)(b) of the Interstate Commerce Act, as amended, vests the Interstate Commerce Commission with authority to impose terms and conditions with respect to unifications, mergers and acquisitions of control of transportation carriers in order to insure "just and reasonable" terms to all concerned. Failure to include protection for plaintiffs as dissenting shareholders, as a distinct class cre- [fol. 4] ated by the merger, is contrary to law and a direct violation of the Commission's statutory duty to impose just and reasonable conditions for the protection of all interests concerned. In this regard the Commission has departed from its past practice of requiring that merger agreements contain either provisions for the protection of dissenting shareholders or conditions to approval for a similar purpose. In the instant case, the Decision and Order of the Commission offers no affirmative protection but instead relegates plaintiffs as dissenting shareholders to "negotiation and litigation in the courts". (Exhibit 1-A, page 41). Such action is wholly without warrant of law.

7. Plaintiffs have suffered and will continue to suffer substantial and irreparable damage by virtue of the Commission's failure to recognize and protect their rights under the Interstate Commerce Act, as amended. The Commis-

sion contends that its authority under the Act to approve mergers, unifications and acquisition of control is plenary, primary and exclusive. Nevertheless, it refuses to require applicants to offer plaintiffs any protection and fails itself to condition its approval of the merger agreement upon a protection of such rights. In this situation plaintiffs are without remedy unless this Court will require the Commission to perform its duties under the statute.

III

Unless this Court shall by temporary stay or suspension of the Order of the Commission enjoin or restrain the enforcement of such order pending the final determination of this action, plaintiffs will suffer irreparable damage through the unlawful action of the Commission and will lose the remedy provided under the Interstate Commerce Act, as amended. On May 23, 1947, plaintiffs requested the Commission to stay the effective date of its order until an appeal could be perfected to this Court to determine the legality of its action. (Exhibit 2). On May 28, 1947, the Commission denied this request for a stay of its order. Unless this Court enjoins or suspends the Order of the Commission, the applicants will proceed to consummate the merger at the earliest available time and the rights of the plaintiff [fols. 5-6] will be lost through the inability of the Commission to revoke or recall its present approval. There can be no doubt of this intention on the part of the applicants. In their letter of May 27, 1947, to the Commission opposing plaintiffs' request for a stay, counsel for the applicants state:

> "Should there be no further postponement of the effective date of the Order approving the merger, applicants have planned to consummate the merger not later than June 5, 1947." (See Exhibit 3).

Once the merger agreement has been consummated, this Court will be powerless to correct the unlawful and arbitrary action on the part of the Commission in denying protection to the rights of plaintiffs.

Wherefore, plaintiffs pray as follows:

(1) That notice and summons be issued herein to the defendants and served upon the United States of America

and the Interstate Commerce Commission as required by law.

(2) That this Court issue and enter a temporary stay or suspension of the Decision and Order of the Commission, dated April 1, 1947, pending final determination of this action.

(3) That said Decision and Order be annulled and its enforcement prohibited and enjoined.

(4) Such other relief in the premises as may be necessary to protect plaintiffs as dissenting shareholders of the Pere Marquette Railway Company.

(Sgd.) Oscar L. Shewmake, 1203 State-Planters Bank Bldg., Richmond 19, Virginia; (Sgd.) Robert M. Cooper, 1302 Eighteenth St., N. W., Washington 6, D. C.

Duly sworn to by Oscar L. Shewmake. Jurat omitted in printing.

[fol. 7] EXHIBIT 1-A TO COMPLAINT—Filed June 4, 1947

Interstate Commerce Commission

Finance Docket No. 15228[1]

Pere Marquette Railway Company Merger, Etc.

Submitted January 10, 1947. Decided April 1, 1947

Subject to conditions prescribed:

1. Merger of the properties and franchises of the Pere Marquette Railway Company into the Chesapeake & Ohio Railway Company for ownership, management, and operation, approved and authorized.

2. Authority granted to the Chesapeake & Ohio Railway Company (a) to issue not exceeding $21,142,940 of 3½ per cent convertible preferred stock, consisting of 211,429.4 shares of the par value of $100 each, and $7,806,805 of common stock, consisting of 312,272.2 shares of the par

---

[1] Also for the purpose of giving effect to the determinations here, No. W-887, Pere Marquette Railway Company Common Carrier Application.

value of $25 each, in conversion of all the outstanding capital stock of the Pere Marquette Railway Company; (b) to sell at not less than current market prices, but at not less than par, all shares of the capital stock issuable in conversion of the shares of stock of the Pere Marquette Railway Company held by the Chesapeake & Ohio Railway Company on the merger date, the proceeds to be used only for capital expenditures; (c) to issue from time to time not exceeding $8,457,176 of additional common stock, consisting of 338,287.04 shares of the par value of $25 each; in conversion of the 211,429.4 shares of 3½-per cent convertible preferred stock; (d) to issue to holders of certificates for common stock of the Chesapeake & Ohio Railway Company outstanding on the merger date, on a share-for-share basis, new certificates of its common stock bearing the provisions of article VI of the merger agreement; (e) to issue in temporary form certificates for shares of stock in respect of which authority is hereby granted, to be exchangeable for definitive certificates; (f) to issue, in lieu of certificates for fractional shares resulting from the conversion of stocks of the Pere Marquette Railway Company into stock of the Chesapeake & Ohio Railway Company and from the conversion of the latter's 3½-per cent convertible preferred stock into its common stock, scrip certificates in bearer form, exchangeable for full shares represented by such certificates within the periods set forth herein; (g) to issue from time to time certificates for full shares of 3½-per cent convertible preferred stock and common stock in exchange for scrip certificates representing such shares; (h) to sell at not less than current market prices, but at not less than par, all shares of its capital stock which, or the rights to which, have been forfeited to it by stockholders dissenting from the merger, the proceeds to be used only for capital expenditures; (i) to assume obligation and liability, as primary obligor, in respect of the payment of the principal of and the interest or dividends on the aggregate amount of indebtedness of the Pere Marquette Railway Company of the nature described herein outstanding on the date of the merger; and (j) to assume obligation and liability, as guarantor, severally with other proprietary companies of the [fol. 8] Toledo Terminal Railroad Company, in respect of the payment of a portion of the interest on $5,800,000 of that company's first mortgage 4½-per cent bonds; all in connection with the proposed merger.

3. Acquisition by the Chesapeake & Ohio Railway Company and, through that company, by the Alleghany Corporation; through merger, of ownership of the vessels of the Pere Marquette Railway Company, authorized under the *Panama Canal Act*. Cf. 34 I.C.C. 86.

4. Transfer to the Chesapeake & Ohio Railway Company of the certificate dated February 23, 1944, issued to the Pere Marquette Railway Company in Docket No. W-887, approved.

5. Acquisition by the Alleghany Corporation, through the Chesapeake & Ohio Railway Company, of control of the properties and franchises of the Pere Marquette Railway Company, and of its interests in subsidiary or affiliated companies and in leases, operating contracts, and trackage agreements relating to operation over or joint use of the railroad lines of such companies and of certain other carriers, approved and authorized.

R. W. Purcell, J. C. Kauffman, John C. Shields, George H. Gardner, R. F. Maskey, and *Glenn C. Wilber* for applicants.

C. M. Mulholland, Emmet J. Brennan, A. G. Berse, Samuel W. Savage, Carl McFarland, S. J. Angland, T. W. Dahlquist, Chas. L. Barnard, Jacob Shapiro, and *Donald D. Wilson* for intervenors.

Report of the Commission

Division 4, Commissioners Mahaffie, Miller and Rogers

By Division 4:

Exceptions to the report proposed by the Bureau of Finance were filed, and the case has been argued orally.

The Chesapeake and Ohio Railway Company, the Pere Marquette Railway Company, and the Alleghany Corporation[2] applied March 8, 1946, for authorization and approval under the Interstate Commerce Act, as amended, as follows:

[2] The Chesapeake & Ohio is a carrier by railroad subject to part I of the act, the Pere Marquette is a carrier by railroad subject to part I and a common carrier by water subject to part III, and the Alleghany is a company which has control of several carriers and is subject to section 20 (1-10) and section 20a (2-11) of the act. See *Chesapeake & O. Ry. Co. Purchase*, 261 I.C.C. 239, 262.

(1) Under section 5(2), for merger of the properties and franchises of the Pere Marquette into the Chesapeake & Ohio for ownership, management, and operation;

(2) Under section 312, for transfer to the Chesapeake & Ohio of the certificate authorizing operation by the Pere Marquette as a common carrier by water;

(3) Under section 20a, for issue by the Chesapeake & Ohio of certain securities, and assumption by it of obligation and liability in respect of securities of the Pere Marquette, and of the Toledo Terminal Railroad Company, a Pere Marquette affiliate, in connection with the proposed merger; and

(4) Under section 5(2), for acquisition by the Alleghany of control, through the Chesapeake & Ohio, of the properties [fol. 9] and franchises of the Pere Marquette, and of the Pere Marquette's interests in subsidiary or affiliated carriers and in leaseholds, contract rights to operate, and trackage rights over or joint use of the railroad lines of such companies and of certain other carriers.

The applicants also ask for such further authority under any other provisions of the act, or of any other law, as we may deem necessary or proper in the premises.

More specifically, in (3) the Chesapeake & Ohio applied for authority (a) to issue 211,429.4 shares of 3½-percent convertible preferred stock of the par value of $100 each, and 312,272.2 shares of common stock of the par value of $25 each; (b) to sell the shares of stock issuable in conversion of the shares of stock of the Pere Marquette held by the Chesapeake & Ohio on the merger date; (c) to issue from time to time 338,287.04 additional shares of common stock of the par value of $25 each in conversion of the 211,429.4 shares of 3½-percent convertible preferred stock; (d) to issue to holders of certificates for its common stock outstanding on the merger date, on a share-for-share basis, new certificates of its common stock bearing on their reverse side the provisions of article VI of the merger agreement; (e) to issue in temporary form certificates for shares of stock in respect of which authority is requested, to be exchangeable for definitive certificates; (f) to issue, in lieu of certificates for fractional shares resulting from the exchange of Pere Marquette stocks for stock of Chesapeake & Ohio and from the conversion of the latter's 3½-percent convertible preferred stock into its common stock, scrip

certificates in bearer form, exchangeable for full shares represented by such certificates within the periods set forth herein after; (g) to issue certificates for full shares of 3½-percent convertible preferred stock and common stock in exchange for scrip certificates representing such shares; (h) to sell for such considerations as may be fixed by its board of directors all shares of its capital stock which, or the right to which, has been forfeited to it by stockholders dissenting from the merger; (i) to assume obligation and liability, as primary obligor, in respect of the payment of the principal of and the interest or dividends on all of the indebtedness of the Pere Marquette outstanding on the merger date; and (j) to assume obligation and liability, as guarantor, severally with other proprietary companies of the Toledo Terminal Railroad Company, in respect of the payment of a portion of the interest on $5,800,000 of that company's first-mortgage 4½-percent bonds.

A hearing was held. No representations have been made by State authorities. The Railway Labor Executives' Association and certain Pere Marquette stockholders intervened, some after the hearing and service of the proposed report.

Intercorporate Relationships

The Chesapeake & Ohio now controls the Pere Marquette through ownership of 313,900 shares, or 69.69 percent, of its common stock, and 13,950 shares, or 11.22 percent, of its preferred; total 327,850 shares, or 47.74 percent, of the stock of all classes.[3] The Chesapeake & Ohio also controls the New York, Chicago & St. Louis Railroad Company, commonly known as the Nickel Plate, through ownership of 192,400 shares or 57.01 percent, of that carrier's common stock; and through the Nickel Plate, has control of the Wheeling & Lake Erie Railway Company. The Alleghany controls the Chesapeake & Ohio through ownership of the beneficial interest in 606,634 shares, or 7.92 percent, of its

[3] Western Pocahontas Corporation, a wholly owned subsidiary of the Chesapeake & Ohio, owns 6,000 shares of Pere Marquette preferred in addition to the stock owned by the parent company. Thus, the Chesapeake & Ohio, as the real party in interest, has the voting power of a total of 333,850 shares, or 48.61 percent, of all the stock.

[fol. 10] common stock[4]; and, through the Chesapeake & Ohio, controls the Pere Marquette, the Nickel Plate, and the subsidiaries and affiliates of those carriers, *Chesapeake & O. Ry. Purchase, supra.*

The (1) Alleghany, (2) Chesapeake & Ohio, and (3) Pere Marquette have directors and senior officers in common, as follows:

	(1)	(2)	(3)
R. R. Young	OD	OD	
A. P. Kirby	OD	D	
R. W. Purcell	OD	OD	O
J. J. Anzalone	OD	O	
R. J. Bowman		OD	OD
H. B. Erminger, Jr.		D	D
R. S. Marshall		O	OD
W. C. Hull		O	O
E. M. Thomas		O	O
W. H. Wenneman		O	O
H. F. Lohmeyer		O	O
C. M. Hepler		O	O
H. E. Walker		O	O
J. C. Kauffman		O	O

(Symbols: O, officer; D, director; OD, officer and director.)

Young is chairman of the Board of the Alleghany and of the Chesapeake & Ohio. Together with Kirby, he acquired control of the Alleghany in 1937 and, at all times since that date, has been prominent in the management of the corporation's affairs. The Chesapeake & Ohio and the Pere Marquette have a common president, and common accounting, purchasing, and engineering research departments, and common officers head their law and traffic departments.

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[4] Pledged as follows: 600,000 shares, with the Chase National Bank as part of the security for a loan of $15,000,000, maturing July 3, 1953; and 6,634 shares, with the Manufacturers Trust Company as part security for a loan of $9,000,000, maturing June 1, 1949. (Since the date of the application, the Alleghany's holding of Chesapeake & Ohio common has been reduced in the net amount of 85,400 shares, so that it presently owns 521,234 shares, or 6.81 percent, of this stock.)

Chesapeake & Ohio System

Parent company.—The Chesapeake & Ohio was incorporated in Virginia in 1878, and is now subject to the general laws of that State. Before the turn of the century its system extended from Washington, D. C., and Newport News, Va., on the east, to Louisville, Ky., and Cincinnati, Ohio, on the west. By 1920, however, it had made definite arrangements to extend its lines to Chicago, Ill., through organization of the Chesapeake & Ohio Railway Company of Indiana (1910); and to Toledo, Ohio, on Lake Erie, through acquisition of control of the Hocking Valley Railway Company (1909) and construction of the Chesapeake & Ohio Northern Railway (1917).

Expansion of system.—With the Commission's authorization and approval, the Chesapeake & Ohio acquired control (1) of the Pere Marquette in 1929, *Control of Erie R. R. and Pere Marquette Ry.*, 138 I.C.C. 517 and 150 I.C.C. 751; (2) control of the Nickel Plate in 1938, *New York, C. & St. L. R. Co. and Erie R. Co. Control*, 224 I.C.C. 259; and (3) inchoate control of the Wheeling & Lake Erie, jointly with [fol. 11] the Nickel Plate, in 1941, Wheeling & L. E. Ry. Co. Control, 249 I.C.C. 490. The progress heretofore made in unification within the system is summarized in the report cited in (2), pages 261-2.

Present operated mileage.—The Chesapeake & Ohio now owns and operates 1,496.9 miles of main lines and 1,220.01 miles of branches, total 2,716.91 miles. Including lines used under trackage rights, it operates a total of 3,084.15 miles of railroad. In general, its railroads extend from the bituminous coal fields of southern West Virginia, eastern Kentucky, and southern Ohio, eastward to tidewater at Hampton Roads, and north and west to the Great Lakes at Toledo and Chicago.

Business.—This company has been engaged in transportation by railroad continuously for nearly 70 years. It is predominantly a carrier of coal. In 1945, coal comprised 77 percent of its total tonnage. Its line originates more bituminous coal than any other railroad in the country; and commercially mineable coal in territory tributary to its lines is estimated to be sufficient to provide continued production, at the average 1935-44 annual rate, for 100 years.

Pere Marquette System

Early history.—A considerable part of the Pere Marquette system was built piecemeal to serve the lumbering industry of Michigan. Construction was begun in 1857, and more than 50 companies actively engaged in building lines which, following many consolidations and various reorganizations, including 7 receivership proceedings, finally were unified in single ownership.

Present parent company.—The Pere Marquette was incorporated in 1917, under the laws of Michigan, as the successor of the Pere Marquette Railroad Company, which had been in receivership since 1912. In this reorganization the debt of the old company was scaled down, but little change in aggregate capitalization was effected because of a corresponding increase in capital stock.

Subsidiaries and affiliates.—The parent company owns interests in the stocks of other carrier corporations, as follows: Flint Belt Railroad Company, 10,000 shares, or 100 percent; Manistee & Northeastern Railway Company, 8,537 shares, 100 percent; Lake Erie & Detroit River Railway Company, 14,000 shares, 100 per cent; Fort Street Union Depot Company, 6,765 shares, 67.65 percent; Toledo Terminal Railroad Company, 6,448 shares, 16.12 percent; Belt Railway Company of Chicago, 2,400 shares, 7.69 percent; Fruit Growers Express Company, 1,002 shares, 1.20 percent; and Railway Express Agency, Inc., 7 shares, .7 percent. It also owns interest in various non-carrier corporations.

The Flint Belt Railroad Company provides a by-pass for freight trains around the congested section of Flint, Mich. The Manistee & Northeastern operates in western Michigan northward from Manistee to Northport on Grand Traverse Bay. The Lake Erie & Detroit River owns lines in Ontario from Walkerville to St. Thomas, 127.16 miles, and from Sarnia to Erieau, 71.62 miles, that constitute a part of the Pere Marquette's Canadian Division and are used by it under a lease dated September 1, 1944. It also uses under lease a line from Ferrysburg to Grand Haven, Mich., .05 mile, owned by the Grand Trunk Western Railroad Company. The Pere Marquette has joint use of lines of other companies, including subsidiaries or affiliates, aggregating 244.27 miles.

Existing system.—In general, the Pere Marquette's system extends from Chicago, through Grand Rapids and

Detroit, Mich., to Buffalo, N. Y.; from Toledo, through Flint and Saginaw, to Ludington, Mich., on the east shore of Lake Michigan; and from Grand Rapids to Petoskey, Mich. The company owns 1,269.1 miles of main lines and 236.56 miles of branches, total, 1,505.66 miles; and operates a total of 1,948.76 miles of railroad. In addition, it operates car ferries across Lake Michigan between Ludington and Milwaukee, Wis., between Ludington and Manitowoc, Wis., and between Ludington and Kewaunee, Wis., a total of 225 route miles, and across the Detroit River between Detroit and Windsor, Ont., a distance of approximately 1 mile. [fol. 12]

Traffic.—The Pere Marquette serves generally the coal-consuming industrial area of the lower peninsula of Michigan, including Detroit, Grand Rapids, Lansing, Flint, Muskegon, Saginaw, Midland, and Bay City, to which it has access from Chicago, Toledo, and Buffalo. By means of its Lake Michigan ferries it effects, at or through the Wisconsin ports, connections with railroads serving the Northwest.

Manufactures and miscellaneous freight comprise about 45 percent of the Pere Marquette's tonnage, and coal and coke comprise about 38 percent. Together these commodities constitute about 83 percent of its total business.

Other Affiliated Lines

The Nickel Plate's lines extend westward from Buffalo to Chicago, Peoria, Ill., Indianapolis, Ind., and St. Louis, Mo. The Wheeling & Lake Erie has lines, all in Ohio, which cross at Harmon and extend thence northwest to Toledo, northeast to Cleveland, southeast to the Ohio River at a point opposite Wheeling, W. Va., and southwest to Zanesville, with subsidiary lines to Huron and to Lorain, on Lake Erie.

Unification for Management

Physical relationships.—The Chesapeake & Ohio and Pere Marquette systems connect for interchange of traffic at Toledo, at LaCrosse, Ind., and at Chicago.

Affiliation.—In 1927, when the Chesapeake & Ohio presented its first proposal to acquire control of the Pere Marquette, the Chesapeake & Ohio and the Nickel Plate were controlled by the Van Sweringen interests, and the Nickel Plate controlled the Pere Marquette, *Control of Erie R.R., etc.* 138 I.C.C. 517. The Commission there authorized the Chesapeake & Ohio to purchase from the Virginia Trans-

portation Company 1,900 shares of Pere Marquette common stock, 12,600 shares of preferred, and 2,100 shares of prior preference; to acquire 36,500 shares of the common from the Vaness Company at the cost thereof to that concern, $2,522,881, or $69.12 a share; and to acquire such other shares of the common, as might be obtainable at not exceeding $110 a share, or such preferred or prior preference stock as might be obtainable at not more than $100 a share.

In July 1928, the Chesapeake & Ohio asked the Commission to modify this determination so as to permit the purchase of 174,900 shares of Pere Marquette common from the Nickel Plate at $133.33 a share plus accrued dividends, in addition to the shares held by the Virginia Transportation Company and by the Vaness Company. The Chesapeake & Ohio was authorized to acquire the 174,900 shares of common from the Nickel Plate and to acquire, at the same price, such additional shares of common as might be necessary to constitute a numerical majority of the Pere Marquette's outstanding stock, with the reservation that this determination was not to be construed in any respect as a precedent for subsequent determination of the reasonableness of the terms, conditions, and considerations in future proposals by the Chesapeake & Ohio to acquire specific blocks of Pere Marquette stock. (See 150 I.C.C. 751).

Benefits.—Officers of the Chesapeake & Ohio were placed in corresponding positions with the Pere Marquette on May 28, 1929; and under this joint management both carriers have profited in economies and in increased traffic. [fol. 13] Annual savings in overhead expense are estimated at $500,000, and savings from more efficient operation of the Pere Marquette, though not ascertainable, are believed to exceed that amount. With corporate affiliation, naturally each railroad became the other's preferred connection at Toledo. Statistics, in carloads, of interchange between the two during each of the past 21 years follow:

Delivered by Chesapeake & Ohio

Year	Coal			Other Freight	Total	Delivered by Pere Marquette	Total interchange
	Revenue	Fuel	Total				
1925	19,824	8,636	28,460	4,407	32,867	10,252	43,119
1926	18,432	12,273	30,705	5,114	35,819	8,923	44,742
1927	10,688	13,455	24,143	5,532	29,675	8,263	37,938
1928	34,075	10,749	44,824	7,582	52,406	8,520	60,926
1929	33,179	14,052	47,231	6,839	54,070	8,884	62,954

1930	32,039	10,641	42,680	6,813	49,493	10,487	59,980
1931	34,815	7,934	42,749	6,495	49,244	7,944	57,188
1932	34,168	6,654	40,822	4,804	45,626	5,461	51,087
1933	39,449	7,159	46,608	5,821	52,429	7,794	60,223
1934	42,845	6,947	49,792	6,936	56,728	8,256	64,984
1935	41,089	7,291	48,380	7,852	56,232	10,312	66,544
1936	52,837	9,333	62,170	8,871	71,041	12,772	83,813
1937	51,087	8,583	59,670	9,418	69,088	13,677	82,765
1938	40,775	7,725	48,500	7,888	56,388	9,843	66,231
1939	43,656	7,993	51,649	9,087	60,736	11,530	72,266
1940	45,196	10,882	56,078	10,645	66,723	13,204	79,927
1941	47,324	10,023	57,347	12,243	69,590	15,259	84,849
1942	51,383	11,523	62,906	9,151	72,057	13,568	85,625
1943	52,166	14,387	66,553	10,269	76,822	12,867	89,689
1944	52,359	10,174	62,533	10,606	73,139	13,889	87,028
1945	44,826	5,048	49,874	10,357	60,231	13,330	73,561

The Pere Marquette serves the only coal mine in operation in Michigan. Its traffic from this source in 1945 amounted to only 68,455 tons. The following tabulation shows the volume, in tons, of revenue coal which it received in interchange with other railroads during recent years:

	1940	1941	1942	1943	1944
Coal receipts:					
All connections	4,101,785	4,129,459	4,607,025	4,759,141	5,087,953
From Chesapeake & Ohio (Toledo)	2,741,262	2,777,990	3,221,468	3,516,449	3,276,966

[fol. 14] The volume of this traffic originated by the Chesapeake & Ohio that moved cross-lake was, at 55 tons to the car, 273,295, 261,800, 324,720, 346,940, and 299,420 tons. The Pere Marquette receives more loaded cars from the Chesapeake & Ohio at Toledo than it receives from any other single railroad at any junction point, and in volume nearly 80 percent of this business is coal.

Complete Unification

During the war years, 1941-45, the Pere Marquette operated at peak capacity. In 1942 it embarked on a debt reduction program and, with favoring bond-market conditions, by early 1945 succeeded in refunding its first-mortgage bonds, with a reduction in annual interest charges from more than $3,200,000 to approximately $1,840,000. With improvement in the financial condition of the Pere Marquette, interest in complete unification was revived in November 1943. Then, for the first time, the Chesapeake & Ohio was prepared to consider seriously assumption of the Pere Marquette's obligations.

The Chesapeake & Ohio's merger offer to the Pere Marquette was approved by the latter's directors on December 4, 1945, and on February 19, 1946, the directors of the Chesapeake & Ohio and the directors of the Pere Marquette entered into the agreement of merger herein presented for the Commission's consideration.

The proposed merger would be accomplished under enabling statutes of the State of Virginia and the State of Michigan. Section 3822 of the Code of Virginia of 1919, as amended, requires that an agreement of merger be adopted by a majority of all the votes cast at the meeting of stockholders at which the proposal is presented, and sections 3822-a and 3822-b provide a remedy for dissatisfied stockholders. The Michigan Railroad, Bridge and Tunnel Act formerly permitted consolidation or merger of any railroad company of that State, but specifically excepted *merger* of a Michigan company into any corporation not organized under its laws. Thus, ordinarily, the elected alternative of merger of the Pere Marquette, a Michigan corporation, into the Chesapeake & Ohio, a corporation of Virginia, would not have been capable of accomplishment, but the barrier was removed, on recommendation of the Governor, for the purpose of enabling the contemplated merger of the Pere Marquette into the Chesapeake & Ohio, by an amendment unanimously passed by both houses at a special session of the legislature, and approved by the Governor on February 18, 1946. The applicants state that the amended Michigan statute does not give to any dissenting stockholder any rights of appraisal. Section 22.233 of Michigan Statutes Annotated requires that an agreement of merger must be sanctioned by a majority vote of the stockholders of each class of stock having voting powers, at separate meetings of the stockholders of each corporation involved in the merger.

The reasons assigned for electing merger, rather than consolidation, are that merger is easier to handle mechanically, and is more economical in avoiding the issue of stock of a new consolidated company.

Stockholders' action.—The merger agreement was submitted to a meeting of stockholders of the Chesapeake & Ohio held on April 23, 1946, and to a meeting of stock-

holders of the Pere Marquette held on May 7, 1946. An analysis of the votes follows:

[fol. 15]

Stock	Chesapeake & Ohio	Pere Marquette[2] Common	Pere Marquette[2] Preferred	Pere Marquette[2] Prior preference	Pere Marquette[2] Total
Total number of holders	82,794	832	773	1,183	.....
Shares:					
(a) Voted for merger by Chesapeake & Ohio[1]	606,634	313,900	[3] 21,950	.....	335,850
(b) Voted for merger by others	3,931,812	57,139	51,280	79,889	[4] 188,308
(c) Voted for merger, total	4,538,446	371,039	73,230	79,889	524,158
(d) Voted against merger	51,785	27,673	30,034	5,907	63,614
(e) Total voted	4,590,231	398,712	103,264	85,796	587,772
(f) Represented but not voted	23,237	800	200	100	1,100
(g) Unrepresented	3,043,886	50,948	20,826	26,104	97,878
(h) Total outstanding	7,657,354	450,460	124,290	112,000	686,750
(i) Owned by others	7,050,720	136,560	102,340	112,000	350,900
Ratios, in percentage:					
(c) to (h)	59.27	82.37	58.91	71.33	76.32
(c) to (e)	98.87	93.06	70.91	93.11	89.18
(e) to (h)	59.95	88.51	83.08	76.60	85.59

Notes:

[1] Or, in the case of Chesapeake & Ohio stock, by the Alleghany.

[2] Including 6,000 shares owned by the Western Pocahontas Corporation, and 2,000 shares owned by the Manistee & Northeastern Railway Company, a wholly owned Pere Marquette subsidiary.

[3] Giving effect to voting-trust certificates issued in connection with reorganization.

[4] Vote by others includes 76,871 shares of Chesapeake & Ohio common, 760 shares of Pere Marquette prior preference, 1,126 shares of Pere Marquette preferred, and 1,566 shares of Pere Marquette common held by Chesapeake & Ohio or Pere Marquette officers, directors, and "associates" of such individuals. The term associates includes relatives by marriage.

Present Financial Structures

The Chesapeake & Ohio's balance sheet as of December 31, 1945, shows investment in transportation property, less recorded depreciation and amortization, $443,918,965, miscellaneous physical property, less recorded depreciation, $6,637,334, investments in affiliated companies, $61,144,660, other investments, $19,421,296, less reserve for adjustment, $2,686,901, total investments, $530,894,875; current assets $82,630,793, deferred assets $837,308, unadjusted debits $941,976; capital stock, $191,433,919, premiums and assessments on capital stock $2,301,093; long-term debt, funded

debt unmatured $164,373,000 and equipment obligations $40,873,000, total, $205,246,000; current liabilities $44,734,820, deferred liabilities, $1,550,368, unadjusted credits $5,430,454; and surplus, unearned $281,135, earned, appropriated, $16,408,664, and unappropriated, $147,918,499, total, $164,608,298. Its authorized capital stock consists of $300,000,000 of common, divided into 12,000,000 shares of $25, par value, and preference stock up to an aggregate par amount not exceeding at the time it is issued 40 percent of the sum of the total capital stock (including the preference stock so issued) then outstanding, plus corporate surplus. The stock now outstanding consists of 7,656,198 shares of common, 289 shares of old $100-par stock not yet exchanged for the $25-par stock in accordance with the plan of exchange heretofore approved by the Commission,[3] and common-stock scrip in the amount of $69.44. No shares of preference stock are outstanding.

[fol. 16]

The Pere Marquette's balance sheet as of December 31, 1945, shows investment in transportation property, less recorded depreciation and amortization, $114,453,874, miscellaneous physical property, less recorded depreciation, $1,083,622, investments in affiliated companies $14,961,990, other investments $687,684, total investments $131,558,926; current assets $22,078,934, deferred assets $1,154,490, unadjusted debits $378,873; capital stock $68,673,612; long-term debt, funded debt unmatured $49,749,000, and equipment obligations $6,357,736, total $56,106,736; current liabilities $11,157,664, deferred liabilities $572,512, unadjusted credits $1,475,603; and surplus, unearned, $10,013 and earned, $17,175,083, total $17,185,096. Disregarding small amounts of scrip, the Pere Marquette has outstanding 450,448 shares of common stock, 124,288 shares of 5 percent cumulative preferred stock, and 111,999 shares of 5 percent cumulative prior-preference stock. All shares are of $100 par value, and each share of all classes is entitled to 1 vote.

Agreement of Merger

When effective. The agreement between the directors of the Chesapeake & Ohio and the directors of the Pere Marquette provides that the contemplated merger will become

[3] See *Chesapake & O. Ry. Co. Stock*, 166 I.C.C. 150.

effective only if the terms and conditions set forth therein are met. The essential conditions are that (1) approval and authorization of the Commission must be obtained; (2) the holders of (a) at least 98 percent of the outstanding prior-preference stock of the Pere Marquette and at least 98 percent of its outstanding preferred stock and common stock held by others than the Chesapeake & Ohio and (b) at least 98 percent of the outstanding common stock of the Chesapeake & Ohio must approve the agreement and the merger; provided, however, that if such votes and assents are less than the required percentages specified above but are sufficient to satisfy the statutory requirements of the States of Virginia and Michigan, and if the board of directors of each of the parties to the agreement determines that it is practicable and desirable and in the interest of such party to consummate the merger with the votes and assents then obtained, such determination will be certified in the certificates accompanying the agreement, and the agreement and the certificates will thereupon be filed in the proper public office of the State of Michigan and with the State Corporation Commission of Virginia. But if, in the absence of the 98 percent vote or assent the board of directors of either of the parties is of the opinion that the merger is impracticable or undesirable, it will give notice of such determination to the other party, and thereupon the agreement will terminate and be of no effect. If and when all the conditions precedent mentioned above have been performed and fulfilled, and a certified executed counterpart of the agreement has been filed in the proper public office of the State of Michigan, the merger will become and be effective on the date, hereinafter referred to as the merger date, when a certified executed counterpart of the agreement is, by order of the State Corporation Commission of Virginia, admitted to record in its office.

[fol. 16a] If any stockholder who has not voted for the merger or otherwise assented to it desires to dissent therefrom, he may, and if so provided at the time by the law of the Commonwealth of Virginia he shall, serve notice of such dissent on certain officers of his corporation, or on the statutory agent thereof, at any time within 3 months after the date of the meeting of the stockholders of his corporation to act on the agreement of merger, without awaiting the consummation of the merger.

Effect of Merger

Upon the merger date the corporate existence of the Pere Marquette will continue in the Chesapeake & Ohio insofar as provided by law, but otherwise will cease upon such date, and thereupon the two companies will be considered as a single corporation, namely, The Chesapeake and Ohio Railway Company, which will continue as a corporation of the Commonwealth of Virginia, possessing all the powers of both companies. All the property of the two companies, and estates and interests therein, leases, leasehold interests, agreements, contracts, debts due to each, things in action, name, undertakings, rights, powers, franchises, privileges, and immunities, will be deemed to be vested in or remain vested in the Chesapeake & Ohio without further act or deed.

Capital Stock

The maximum number of authorized shares of the capital stock of the Chesapeake & Ohio will be 12,650,000, divided into 650,000 shares of preferred stock of the par value of $100 each, and 12,000,000 shares of common stock of the par value of $25 each. The minimum number of shares of stock will be 10 shares of common stock.

Preferred Stock

The board of directors of the Chesapeake & Ohio may authorize the preferred stock to be issued in series. The shares of different series may vary as to (a) the designation thereof; (b) the rate at which dividends are payable on the shares of such series and the dividend-payment dates; (c) the price or prices payable in respect of the shares thereof in case of redemption; (d) the amount payable in respect of the shares in case of liquidation, dissolution, or winding up of the corporation, hereinafter called the liquidation price, and the amount payable, if any, in addition to the liquidation price for such series in case such action be voluntary, hereinafter referred to as the liquidation premium; (e) the amount of the retirement or sinking fund, if any, provided for the purchase or redemption of the shares of such series, in addition to the retirement fund provided for in section 6, division A, of article VI of the agreement; and (f) the right, if any, to convert the shares of such series into shares of any other class or classes of

stock or of any other series of the same class, and the rate or basis, time, manner, and conditions of conversion or the method by which the same may be determined.

The shares of all series of preferred stock will be equal in all respects except as, consistently with section 1 of article VI of the agreement, may be otherwise determined by the board of directors prior to the issue thereof, and all shares of each series will be equal in all respects.

Dividends. The holders of the preferred stock of each series will be entitled to receive, if and when declared payable by the board of directors, dividends at, but not exceeding, the dividend rate for such series, payable on such dates as will be fixed therefor. The dividends will be cumulative but those in arrears will not bear interest, and no dividends will be declared or paid upon or set apart for the common stock unless and until full dividends on the outstanding preferred stock have been paid, or declared and set apart for payment, with respect to all past dividend periods and the current dividend period. Dividends on all shares of the preferred stock of each series will begin to accrue [fol. 17] and be cumulative from the date of the initial issue of any shares of such series, but (a) all dividends declared payable to the holders of record of preferred stock of any series as of a date on which shares of such series are owned by the corporation will be deemed to have been paid in respect of such shares owned by it on such date, and (b) in the event of the issue of additional shares of preferred stock of any series subsequent to the date of the initial issue of shares of such series, all dividends declared payable to the holders of record of preferred stock of such series as of a date prior to such additional issue will be deemed to have been paid in respect of the additional shares. Current dividends will not be paid or set apart for payment on the preferred stock of any series unless and until full dividends for all past dividend periods on the outstanding preferred stock of all series have been paid, or declared and set apart for payment; and if a default exists in the payment of dividends on all series of preferred stock, no dividends will be declared on the preferred stock of any series unless dividends are declared on the preferred stock of all series then outstanding, in proportion to the aggregate amounts of the deficiencies in payment of such full dividends for the respective series.

Preference on liquidation, etc. In the event of any liquidation, dissolution, or winding up of the corporation, the holders of the preferred stock of each series will be entitled to receive, for each share thereof, the liquidation price for such series; plus, in case such liquidation, etc., is voluntary, the liquidation premium for such series, if any, together in all cases with a sum equal to all dividends accrued or in arrears thereon, before any distribution of the assets is made to holders of common stock; but the holders of the preferred stock will not be entitled to any further participation in such distribution. In the event the assets distributable among the holders of the preferred stock are insufficient to permit payment in full, then such assets will be distributed among such holders ratably in proportion to the full preferential amounts to which they are respectively entitled.

Redemption. The corporation may, at its option, upon not less than 30 days' notice, at any time or from time to time, except as otherwise provided in the agreement with regard to the 3½-percent convertible preferred stock, redeem the whole or any part of the preferred stock, or of any series thereof by lot, at the redemption price for such series, together with a sum equal to all dividends accrued or in arrears thereon as of the redemption date; but the corporation may not redeem less than all of the preferred stock at any time when full dividends with respect to all past dividend periods on the outstanding preferred stock have not been paid, or declared and set apart for payment.

Voting rights. Each holder of preferred stock will be entitled to one vote for each share standing in his name on all matters lawfully coming before the shareholders, and the holders of preferred stock will not be entitled to any separate class vote on any matter except in connection with the increase in the number of shares of such stock, as hereinafter stated, or as required by law.

Retirement fund. As and for a retirement fund for the purchase of preferred stock, the corporation will, within 30 days after the merger, set aside the sum of $250,000, and, so long as accrued dividends on all shares of outstanding preferred stock have been paid for all past dividend periods, it will on March 1 of the year succeeding the first full calendar year after the merger date, and on March 1 of each year thereafter, set aside an amount equal to 5 percent of its residuary earnings, as defined in the agreement, for the

preceding calendar year, or an amount equal to the difference between the sum, if any, so set aside and $1,000,000, whichever amount is less. Such fund will be used, in whole or in part, on such occasions as may be determined by the board of directors, for the purchase of shares of preferred stock of any series in the open market or at public or private sale at not more than the redemption price thereof, plus brokerage commissions.

[fol. 18] *Cancelation of reacquired shares.* All shares of preferred stock reacquired by the corporation through redemption, purchase through any retirement or sinking fund, or conversion into common stock will be canceled and retired, but such cancelation and retirement will not reduce the maximum authorized amount of the preferred stock.

No preemptive rights. The holders of preferred stock of the corporation will have no preemptive rights to purchase, or to have offered to them for purchase, any of the stock of any class or any other securities of the corporation which may be from time to time authorized, offered for sale, disposed of, or issued.

3½-percent convertible preferred stock. The first series of preferred stock will be designated as 3½-percent convertible preferred stock, of which 211,429.4 shares will be issued in conversion of shares of stock of the Pere Marquette when the proposed merger becomes effective. The dividend rate on the shares of such series will be $3.50 a share a year, and the dividend-payment dates will be February 1, May 1, August 1, and November 1 of each year. The liquidation price of the shares of such series will be $100 a share and the liquidation premium $5 a share.

Conversion right of 3½-percent convertible preferred stock. Each share of 3½-percent convertible preferred stock may, at the option of the holder thereof, be converted at any time into fully paid and non-assessable shares of common stock of the corporation at the conversion ratio in effect at the time of conversion, determined as hereinafter stated, upon the surrender to the corporation for such purpose of the certificate representing such stock, but in respect of any stock called for redemption the conversion right will expire at the close of business on the day preceding the redemption date. No adjustment will be made on account of dividends accrued or in arrears on the 3½-percent convertible preferred stock surrendered for conversion or for dividends on common stock issued upon such conversion.

In the event that a holder of convertible stock, upon such conversion, becomes entitled to receive a fractional interest in one share of common stock, the corporation will issue, in lieu of a fractional share certificate, a transferable non-dividend-bearing, nonvoting scrip certificate, in such form and expiring after such reasonable time as the board of directors may have prescribed before the issue thereof, the scrip certificate to be exchangeable in amounts aggregating one or more full shares for a common stock certificate representing such share or shares, together with a new scrip certificate of like tenor for any remaining fractional right.

Initially, the conversion ratio will be 1.6 shares of common stock for each share of convertible preferred stock, based on a fixed conversion price of $100 a share for the preferred stock and an initial conversion price of $62.50 a share for the common stock, but if the happening of one or more of the events specified hereinafter produces an adjusted conversion price of the common stock, a new conversion ratio, determinable by dividing $100 by such adjusted conversion price, will be established provided such quotient will result in an increase or decrease in the conversion ratio then in effect of one-fortieth of a share, or any multiple thereof. Smaller fractions will be disregarded unless and until their cumulative effect will be to change the conversion ratio by one-fortieth of a share.

In case the corporation subdivides the outstanding shares of common stock into a larger number of shares, the conversion price in effect immediately prior to such subdivision will be reduced proportionately, and, conversely, in case the outstanding shares of common stock are combined into a smaller number of shares, the conversion price in effect immediately prior thereto will be increased proportionately. In the event the corporation issues any shares of common stock, other than those mentioned below, for a consideration per share less than the conversion price in effect immedi- [fol. 19] ately prior to the time of such issue, or without consideration, then the conversion price will be adjusted to the price obtained by multiplying the number of shares of common stock outstanding immediately prior to such issue by the then existing conversion price, adding to the result so obtained the value of the consideration, if any, received by the corporation upon such issue, and dividing the sum so obtained by the total number of shares of com-

m[illegible]n stock outstanding immediately after such issue. There will, however, be no adjustment of the conversion price because of any of the following issues of common stock: (a) Shares issued or issuable in conversion of shares of the Pere Marquette; (b) shares issued upon conversion of any convertible securities, (such securities being defined in the agreement as any stock or other securities convertible into or exchangeable for shares of common stock), or upon the exercise of any rights, warrants, or options; and (c) shares theretofore acquired by the corporation and then held in its treasury. Common stock issued as a stock dividend will be deemed to have been issued without consideration.

If and whenever the corporation issues any convertible securities, as defined above, or any rights, warrants, or options to purchase common stock or convertible securities, then such issue will be deemed to be the issue of the total maximum number of shares of common stock necessary to permit the conversion or exchange of all such convertible securities, or the exercise of all such rights, warrants, or options; and the amount received or receivable by the corporation as consideration for the issue thereof, plus the minimum aggregate amount, if any, payable to the corporation upon such conversion, exchange, or exercise, will be deemed to be the consideration actually received for such common stock, and the maximum number of shares of common stock required to be issued as aforesaid will, for that purpose, be deemed to be outstanding thereafter. Upon the expiration of such conversion or exchange privilege or of such rights, warrants, or options, if any thereof have not been exercised, (1) the number of shares of common stock deemed to have been issued and outstanding by reason of the fact that they were issuable upon the exercise of such conversion or exchange privilege or of such rights, warrants, or options, which were not so converted, exchanged, or exercised, will no longer be deemed to be issued and outstanding; and (2) the conversion price will be readjusted and thereafter be the price which it would have been had adjustment been made on the basis of the issue only of the shares of common stock actually issued upon the exercise of such conversion or exchange privilege or of such rights, warrants, or options.

If any shares of common stock or any convertible securities or any rights, warrants, or options to purchase any

such stock or securities are to be issued, in connection with a purchase of assets or upon a merger of another corporation into the Chesapeake & Ohio, for a consideration other than cash, or a consideration which includes cash, if such cash constitutes a part of the assets of a corporation or business substantially all the assets of which are being received as such consideration, then the board of directors of the corporation will, solely for that purpose, determine the fair value of such consideration, and such common stock, convertible securities, rights, warrants, or options will be deemed to have been issued for an amount of cash equal to the value so determined.

In case of any reclassification or other adjustment of the capital stock of the corporation, each share of the 3½-percent convertible preferred stock will thereafter be convertible into the number of shares of stock or other securities to which a holder of the number of shares of common stock of the corporation deliverable upon conversion of such share of preferred stock would have been entitled upon such reclassification or other adjustment.

In the event of a consolidation of the corporation with another corporation or corporations, or of a merger of the corporation into another corporation, each share of 3½-percent convertible preferred stock will at the option of the holder thereof, be exchangeable (1) for stock or other [fol. 20] securities of such consolidated corporation or of the corporation into which merger is effected at the ratio and upon the terms and conditions specified in the articles or agreement of consolidation or merger, or (2) for the amount of stock or other securities of such consolidated or merged corporation as would, at the ratio and upon the terms and conditions specified in such articles or agreement, be given in exchange for the number of shares of common stock then issuable, in accordance with the conversion ratio in effect of that time, upon conversion of each share of 3½-percent convertible preferred stock under the provisions above mentioned.

In case (a) the corporation pays any dividend or makes any distribution upon the common stock payable otherwise than in cash, or (b) the corporation offers to the common stockholders subscription rights for any additional shares of stock of any class, or any other rights, warrants, or options, or (c) any reclassification or adjustment is made of the capital stock of the corporation, or (d) a voluntary

or involuntary dissolution or liquidation of the corporation occurs, the corporation will cause to be mailed to the holders of record of the 3½-percent convertible preferred stock and to the transfer agent of such stock, a notice of at least 10 days stating the date on which (1) a record is to be taken for the purpose of such dividend, distribution, or offering of rights, warrants, or options, or (2) such reclassification or adjustment of capital stock, or such dissolution or liquidation is to take place, and the date, if any is to be fixed, as of which holders of commmon stock of record will be entitled to exchange their shares of such stock for stock or other securities or other property deliverable upon such reclassification or adjustment of capital stock or such dissolution or liquidation.

The corporation will initially reserve 338,287.04 shares of common stock to permit the conversion into such stock of the 211,429.4 shares of 3½-percent convertible preferred stock to be issued in conversion of shares of stock of the Pere Marquette. Whenever, by reason of the provisions mentioned above, the number of shares of common stock issuable upon conversion of each share of 3½-percent preferred stock is increased, the corporation will reserve a sufficient number of additional shares of common stock to provide for such increase, subject to authorization of the issue thereof by the Commission.

Redemption provisions of 3½-percent convertible preferred stock.—The provisions applicable to the redemption of preferred stock mentioned above will apply to the redemption of the 3½-percent convertible preferred stock except as hereafter stated. The redemption price of the shares of the 3½-per cent preferred stock will be $105 a share. The redemption date will not be earlier than November 1, 1950, and thereafter will be only on a dividend-payment date, but a call for redemption may be issued at any time prior to November 1, 1950.

If upon issuing a call for redemption of all the outstanding shares of the 3½-percent preferred stock, the corporation deposits in trust with a bank or trust company the funds necessary for such redemption, and if the corporation at the same time deposits in trust with such depositary under an agreement of trust such number of shares of its common stock as may be required, at the conversion ratio then existing, to permit conversion of all such preferred stock into common stock, then all rights in the merger

agreement conferred upon the holders of such preferred stock are to cease and terminate and each such holder will thereafter have a beneficial interest in the trust proportionate to his preferred stock holding. The depositary will issue to each holder of shares of such preferred stock, upon surrender to it of the certificate therefor, a certificate representing shares of beneficial interest in the trust equal to the number of shares represented by the stock certificate so surrendered.

[fol. 21] Any holder of shares of beneficial interest will at any time be entitled, upon surrender of the certificate therefor to such depositary for redemption, to receive out of the trust funds held by the depositary an amount equal to the sum theretofore deposited by the corporation for and in respect of the shares so to be redeemed, less the aggregate amount of any sums theretofore disbursed with respect thereto pursuant to the provisions of the agreement hereinafter set forth. The depositary, upon making any such payment, will release and transfer to the corporation, out of the shares held by it in trust, the number of full shares of the common stock of the corporation to which the holder of such certificate would have been entitled upon conversion thereof into common stock.

In lieu of surrendering his certificate for redemption, any holder of shares of beneficial interest may at any time surrender his certificate therefor to the depositary for conversion into common stock, and thereupon he will be entitled to receive from the depositary such number of full shares of the common stock of the corporation held in trust, together with a scrip certificate for any fractional share, as he would have been entitled to receive from the corporation as a preferred stockholder. The depositary, upon receiving for conversion any shares of beneficial interest, will repay to the corporation, out of the funds held by it in trust, an amount equal to the sum theretofore deposited by the corporation in respect of the shares of beneficial interest so converted, less the aggregate amount of any sums theretofore disbursed with respect thereto. Until each holder of any shares of beneficial interest has surrendered for redemption his certificate therefor or has exercised his conversion right, but in no event after the redemption date, the depositary, on the first days of February, May, August, and November of each year, will distribute to such holder, out of the funds held by it in trust,

the sum of 87½ cents in respect of each share of beneficial interest then held by such holder, but any sum so distributed will be credited upon the amount distributable in respect of such share upon the redemption thereof.

If, prior to the redemption date, any change occurs in the conversion ratio, the corporation either will deposit additional shares of common stock or will be entitled to withdraw shares thereof previously deposited, so that there will be held by the depositary at all times a number of shares of common stock sufficient for the conversion of all then outstanding shares of beneficial interest at the conversion ratio then in effect. Upon the redemption date the depositary will release and transfer to the corporation all shares of common stock then held by it under the agreement.

The certificates of beneficial interest will be in such form as will be determined by the depositary, with the approval of the corporation, consistently with the provisions of the agreement, and will be transferable on the books of the depositary. Upon and after the establishment of the trust, the certificates of 3½-percent preferred stock, until so exchanged, will be deemed to be and will be certificates of beneficial interest in the trust.

All shares of common stock issued to the depositary and reacquired by the corporation because of non-exercise of the conversion privilege will be canceled and retired, but such cancelation and retirement will not reduce the maximum authorized amount of the common stock.

Common Stock

Dividends.—Dividends may be declared upon the common stock only after all dividends upon shares of preferred stock for the current and all past dividend periods have been paid, or have been declared and a sum sufficient for the payment thereof set apart, and only if the corporation has set aside all amo-nts required for the retirement fund mentioned above.

[fol. 22] *Liquidation.*—In the event of any liquidation or dissolution of the corporation, whether voluntary or involuntary, the holders of common stock will be entitled, to the exclusion of holders of preferred stock, to share ratably in the assets of the corporation remaining after payment of all amounts payable to the holders of preferred stock in accordance with their rights and privileges.

Voting rights.—Each holder of common stock will be entitled to one vote for each share of such stock standing in his name on all matters lawfully coming before the shareholders of the corporation.

Preemptive rights.—The holders of common stock will have preemptive rights to purchase shares of any class of stock of the corporation which at any time may be issued for a cash consideration, whether such stock is a part of that authorized by the merger agreement or will be hereafter authorized, as well as any securities of the corporation issued for a cash consideration which may be convertible into any of its stock or which may be issued with stock purchase warrants attached. There will, however, be no such preemptive rights to purchase any shares acquired by the corporation as a result of, or upon a dissent from, the merger, or any other shares at any time acquired or reacquired by the corporation and held in its treasury. The preemptive rights of the common stockholders will permit each such stockholder to purchase only his proportionate share of such stock or other securities, within such period and at such price and upon such terms as may be fixed by the board of directors of the corporation. No such preemptive rights will, however, exist in any holder of common stock in any case where such rights have been waived by the affirmative vote of the holders of at least two-thirds of all the shares of common stock then outstanding.

General Provisions

Issue and sale of shares.—Subject to the above-mentioned provisions, the board of directors of the corporation in its discretion and without further approval or other action by the stockholders, but subject to all requisite authorization of public authorities, will have power to cause the corporation to issue and dispose of any and all shares of preferred stock and common stock of the corporation at the time authorized but not provided in the agreement to be issued in the proposed merger, and to create, issue, and dispose of any rights or options in respect of all or any part of such shares, to such persons, at such time or times, and for such considerations as may be fixed by the board of directors.

Purchase of shares.—So long as the corporation has set aside all amounts required for the retirement fund, the board of directors of the corporation will have the power,

in its discretion and without action by the stockholders, to cause the corporation to purchase any of the shares of its capital stock of any class at such price or prices as the board may deem advisable or desirable, but, in the case of the preferred stock, at not exceeding the redemption price, plus the usual and customary brokerage commissions, but in an aggregate amount not exceeding the surplus at the time of purchase, and to cancel such shares, or to hold them as treasury stock, or to resell them for such consideration as may be approved by the board and authorized by us. The corporation will not, however, at any time purchase or otherwise acquire for a consideration less than the whole of its then outstanding preferred stock, or purchase or otherwise acquire for a consideration any shares of its common stock, while dividends on the preferred stock for a period of one or more calendar years have neither been paid, nor declared and set apart for payment.

Changes in authorized capital stock and other amendments.—The number of authorized shares of capital stock of the corporation of any class, or the amount of capital represented thereby, may, subject to our authorization, be increased or decreased, or 1 or more new classes of shares may be created, or the charter of the corporation may be [fol. 23] amended in any other way, in the manner and subject to the conditions and limitations prescribed by the laws of Virginia. So long as any shares of the preferred stock are outstanding, however, the corporation will not authorize any shares of preferred stock in addition to the 650,000 shares authorized by the merger agreement except upon the written consent, or the affirmative vote at a meeting, of the holders of two-thirds of the total number of shares of preferred stock then outstanding. Upon such vote or consent, and any requisite vote or consent of the holders of the shares of common stock then outstanding, the corporation may authorize such additional shares, or increase the maximum number of authorized shares, of the preferred stock, subject to our authorization.

Ratios of Exchange

The manner of converting the outstanding shares of capital stock of the Pere Marquette, and the distribution of the shares of the capital stock of the Chesapeake & Ohio to be issued in conversion thereof, will be as follows: Each share

of the 5-percent cumulative prior preference stock of the Pere Marquette, including all accrued and unpaid dividends thereon as of the merger date, will be converted into one share of preferred stock and one-third of one share of common stock of the Chesapeake & Ohio. Each share of the 5-percent cumulative preferred stock of the Pere Marquette, including all accrued and unpaid dividends thereon as of the merger date, will be converted into eight-tenths of one share of preferred stock and four-tenths of one share of common stock of the Chesapeake & Ohio. Each share of common stock of the Pere Marquette will be converted into one-half of one share of common stock of the Chesapeake & Ohio. All shares of the capital stock of the Chesapeake & Ohio issuable in conversion of shares of the Pere Marquette held by the Chesapeake & Ohio on the merger date will thereafter be held by the latter in its treasury, and may be sold by it, as fully paid and non-assessable shares, subject to our authorization, to such persons, at such time or times, and for such considerations, as may be fixed by the board of directors.

Each share of common stock of the Chesapeake & Ohio outstanding on the merger date, including each share of such stock held by it in its treasury, will continue to be a share of such stock, and the presently issued certificates for such stock will continue to be valid certificates therefor, but the holders thereof will be entitled to receive, in lieu of their present certificates, upon the surrender thereof, new certificates bearing on their reverse side the provisions of article VI of the merger agreement.

Upon and after the merger date, each holder of a certificate or certificates of stock of the Pere Marquette, upon the surrender thereof for cancelation to an agent to be designated for the purpose by the Chesapeake & Ohio and the Pere Marquette prior to such date, will be entitled to receive a certificate or certificates in definitive form, or in temporary form exchangeable for certificates in definitive form when prepared, for the number of full shares of the class or classes of stock of the Chesapeake & Ohio to which he will be entitled pursuant to the provisions of article VII of the merger agreement mentioned above, and for any fractional rights resulting from such exchange.

Fractional rights to stock of the Chesapeake & Ohio resulting from the conversion of shares of the Pere Marquette into shares of the Chesapeake & Ohio will be pre-

vided for in the following manner: For a period of 3 years next following the merger date, scrip certificate in bearer form will be issued for such fractional rights. At any time within such 3-year period, the corporation, upon surrender to it of such scrip certificates in amounts representing in the aggregate one or more full shares of stock of the same class, will issue a certificate or certificates for such number of full shares of such class of stock, together with a new scrip certificate for any remaining fractional right. The right to exchange script certificates for certificates repre- [fol. 24] senting full shares will expire at the end of the 3-year period. Scrip certificates will not entitle the holder thereof to any of the rights, powers, or privileges of a stockholder of the corporation, and the holder thereof will have only such rights and privileges as are expressly provided for in the agreement.

As soon as practicable after the expiration of 3 years next following the merger date, the corporation will cause to be sold for cash, at public or private sale, at the then prevailing market prices, (but at not less than par) the aggregate number of shares of each class of stock deliverable upon the surrender of all scrip certificates outstanding at the end of such period, together with an additional number of shares of each class of stock equal to the aggregate of the fractional rights in stock of such class which would result from the exchange of all certificates of stock of the Pere Marquette not surrendered for exchange during such period. To the sum of money realized from the sale of all such shares of each class of stock, there will be added the amount of all dividends declared and payable on such shares between the merger date and the date of such sale, and the total sum of money applicable to each class of stock will be held by the corporation, or an agent to be appointed by it, as a fund for the benefit of holders of scrip certificates for, and of fractional rights to, the shares of such class. Thereafter, each holder of a scrip certificate for, or of a fractional right to, the shares of either class of stock, upon surrender thereof will be entitled to receive his prorata share of the fund applicable to such class of stock, without interest, and he will have no other or further rights in respect of such scrip certificate of fractional share right.

If the corporation makes payment to any stockholder for or in respect of any shares of stock of either of the parties

to the merger agreement, whether pursuant to adjudication, compromise, purchase, or otherwise, or if the corporation at any time is subject to liability to any stockholder who has dissented from the merger and such stockholder by reason of his dissent has forfeited his right to receive or to retain the shares in respect of which he has dissented, then, in each such case, the shares of the corporation which he would have been entitled to receive or retain had he assented to the merger, or a number of shares equal thereto, may be sold by the corporation as fully paid and nonassessable shares, subject to our authorization, to such persons, at such time or times, and for such considerations, as may be fixed by the board of directors. If any shares are issued and sold under the merger agreement before any such dissenting stockholder has surrendered to the corporation his certificate for shares in respect of which he has dissented, the shares represented by such certificate, upon the surrender thereof, will be canceled, but such cancelation will not reduce the maximum authorized amount of the capital stock.

From and after the date on which certificates for full shares of stock of the corporation are made available for exchange as aforesaid, the holders of shares of stock of the Pere Marquette will not be entitled to vote at any meeting of stockholders of the corporation and will not be entitled to receive any dividends unless and until they have actually exchanged their stock certificates for temporary or definitive certificates of stock of the corporation issuable in respect thereof, dividends theretofore declared then being payable. But the corporation will at all times from and after the merger date be entitled to treat the outstanding certificates for stock of the Pere Marquette as evidencing respectively the ownership of the number of shares of stock of the corporation into which such outstanding stock of the Pere Marquette will have been converted, notwithstanding the failure of any stockholders of the Pere Marquette to exchange their certificates for certificates of stock of the corporation. After the merger date there will be no further issue or transfer of certificates of stock of the Pere Marquette, and as such certificates are presented to the corporation they will be canceled and certificates of stock of the corporation will be issued in exchange therefor as stated above.

[fol. 25] No shares of stock of the corporation will be issued in exchange for shares of the Pere Marquette owned by the latter and held in its treasury, and the shares last mentioned will be canceled and retired on the merger date.

Capital Stock to Be Issued in Connection with Merger

The amount of the capital stock which the Chesapeake & Ohio will issue in connection with the merger will be $28,949,745, consisting of 211,429.4 shares of 3½-percent convertible preferred stock and 312,272.2 shares of common stock. All such stock will be issued in conversion of the outstanding capital stock of the Pere Marquette, including shares of such stock owned by the Chesapeake & Ohio but excluding shares held in the treasury of the Pere Marquette, and will be deemed to have been issued as of the merger date. All such shares will be fully paid and nonassessable.

Upon the merger date the amount of the outstanding capital stock of the Chesapeake & Ohio will be $220,383,595, consisting of the aforesaid 211,429.4 shares of 3½-percent convertible preferred stock and 7,969,626.2 shares of common stock.

Obligations to Be Assumed by Chesapeake & Ohio

The Chesapeake & Ohio also proposes to assume obligation and liability, as primary obliger, in respect of the payment of the principal of and the interest or dividends on all of the indebtedness of the Pere Marquette outstanding on the merger date, and, as guarantor, severally with other proprietary companies of the Toledo Terminal Railroad Company, in respect of the payment of a portion of the interest on $5,800,000 of that company's outstanding first-mortgage 4½-percent bonds. As of the date of the application the indebtedness of the Pere Marquette consisted of $59,499,000 of first-mortgage 3⅜-percent bonds, series D, $6,203,000 of equipment-trust certificates, and $906,000 of promissory notes.

The series D bonds of the Pere Marquette are a part of $60,000,000 of such bonds authorized by our order of February 24, 1945, in *Pere Marquette Ry. Co. Bonds*, 261 I.C.C. of which $49,499,000, including $50,000 reacquired and held in the treasury for sinking-fund purposes, were outstanding on April 24, 1946, and $10,000,000 were nominally issued and are held in the treasury. They are secured by the first

mortgage and deed of trust dated July 1, 1916, made by the Pere Marquette to the Bankers Trust Company and Hugh McK. Landon (R. G. Page, successor) trustees, as supplemented. They are dated March 1, 1945, bear interest at the rate of 3⅜-percent per annum, payable semiannually on March 1 and September 1, contain redemption and sinking-fund provisions, and will mature March 1, 1980.

The equipment-trust certificates and the promissory notes of the Pere Marquette were authorized by our various orders. Payments thereon are being made periodically, and since the date of the application additional trust certificates have been issued by the Pere Marquette pursuant to our authorizations. Because of this fluctuation in debt, the Chesapeake & Ohio is unable at this time to state definitely the amounts of the obligations to be assumed by it on the date of the merger. Our authorization here will be such as to cover all the obligations of the Pere Marquette of this nature outstanding on the merger date.

General Balance Sheets

A constructed balance sheet submitted in the record shows that the capitalization of the Chesapeake & Ohio after giving effect to the merger would be capital stock outstanding $220,383,689, funded debt unmatured $214,122,000, and equipment obligations $47,230,736. Total funded debt outstanding would be $261,352,736 and total capitalization, consisting of stock and funded debt, would be $481,736,425. To these figures should be added any equipment obligations authorized and issued subsequent to December 31, 1945, and deducted therefrom would be any retirements effected since that date.

[fol. 26] Road and equipment is shown at $814,951,437, with accrued depreciation thereon of $181,195,726, resulting in a net figure of $633,755,711.

Benefits of Union

Routes.—With merger of the Pere Marquette, the enlarged Chesapeake & Ohio system will have the advantage of an alternate route to Chicago, via Toledo and Grand Rapids, and direct routes to Wisconsin gateways. While the route from Russell yard, near Ashland, Ky., to Chicago, via Cincinnati, is 173.6 miles shorter, favorable gradients on the Grand Rapids route tend to offset the shorter mileage

through Cincinnati. Several large coal-consuming industries along the Chicago lake front can be served readily by the Pere Marquette route through the Indiana Harbor Belt Railway connection at Indiana Harbor. Coal now moving through Cincinnati into the Chicago switching district must be handled for greater distances to these industries by switching carriers, and the time factor in making deliveries via the Grand Rapids route compares favorably with the movement of this traffic via the Cincinnati route.

Earnings.—The applicants expect that the merger will bring about an increase in traffic and revenues of the enlarged system. At present shippers treat the Chesapeake & Ohio and the Pere Marquette as separate railroads as to routing. If they are combined, the tendency will be to afford to the Chesapeake & Ohio the longest possible haul of its own lines.

Competition.—The merger would not lessen competition, but would create a strong, well-balanced system that would afford stiffer competition to the New York Central,[6] Pennsylvania, Baltimore & Ohio, and other railroads.

Finance.—Unification of the companies would facilitate refinancing of the Pere Marquette's first-mortgage 3⅜-percent bonds. It is contemplated that this measure will be taken promptly after consummation of the merger; and expected that, if favorable market conditions continue, annual interest charges can be reduced by at least $350,000.

Further savings.—The Chesapeake & Ohio's President believes that the greatest saving, in money, will result from reduction of interest charges but, over and above monetary savings which the merger would effect, would be the advantage of having a strong, efficient transportation system. Other witnesses estimate economies from substitution of a single administrative organization for two, elimination of accounting for equipment rents, joint expense, and division of revenue, reduction in the number of reports to public regulatory bodies, and consolidation of separate off-line traffic offices, at $289,000 to $350,000 a year.

Service.—The proposed merger would not affect adversely adequate transportation service to the public. The applicants assert generally that, on the contrary, service would be improved.

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[6] See footnote 20.

Other railroads.—No other railroad has requested to be included in the merger. The policy of the merged company will be to maintain present relations with other railroads, but the applicants expect imposition of usual conditions with respect to preservation of through routes and joint rates in effect with other railroads. This will be done.

Fixed charges.—The merger would not result in any increase or decrease in indebtedness. Rentals payable by the Pere Marquette for leased roads and equipment amounted to $128,016 in 1945. We find that the proposed merger will not result in any increase in total fixed charges; and that the assumption by the Chesapeake & Ohio of payment of fixed charges of the Pere Marquette would not be contrary to the public interest.

[fol. 27] The effect on stocks outstanding in the hands of the public may be summarized, as follows:

Capital stocks

Company	Before merger			After merger		
	Shares authorized	Outstanding		Outstanding (c)		Shares authorized
		Shares	Par Value	Par Value	Shares	
Chesapeake & Ohio	12,000,000	7,657,354	$191,433,919	$215,204,300	(a)	(b)
Pere Marquette	776,842	686,735	68,673,612	.....	...	...
Total	.....	.....	260,107,531	215,204,300	(a)	(b)

(a) Common, 7,807,096, preferred, 200,269.
(b) Common, 12,000,000, preferred, 650,000.
(c) Not including 11,160 shares of preferred and 162,531 shares of common to be issued in exchange for Pere Marquette stock held by the Chesapeake & Ohio.

Thus the merger would bring about a reduction of $44,903,231, par value, in publicly held stocks. It would dispose of accrued dividends amounting, on January 31, 1946, to $13,071,025 on Pere Marquette preferred and prior-lien stocks; and dividend charges on these stocks, now amounting to $1,185,435 a year, will be replaced by an annual dividend charge on the Chesapeake & Ohio's new preferred amounting to $700,941, a reduction in preferential dividends of $480,493 a year. If all the new preferred should be converted, the publicly outstanding stock would consist of 8,127,526 shares of common having a total par value of $203,188,150, a further reduction of $12,016,150.

Employees.—The merger would not result in any change in train operation; but, in effectuating the savings mentioned, certain clerks would be displaced. The Chesapeake & Ohio and the Pere Marquette have entered into a stipulation and agreement with the Railway Labor Executives Association adopting the Washington Job Protection Agreement of May 21, 1936, for the protection of all employees represented by the association, and agreeing that the same may be accepted by the Commission, as an agreement of the character contemplated by section 5(2)(f) of the act. Similar arrangements have been made with the Brotherhood of Railroad Trainmen (Pere Marquette Company) and General Committee of Adjustment, Brotherhood of Locomotive Engineers, and the applicants are willing to enter into a similar stipulation and agreement with accredited representatives of any employees not represented by the organizations mentioned. As to such unrepresented employees we will prescribe the same conditions as in *Chicago & N. W. Ry. Co. Merger*, 261 I.C.C. 672.

Terms and Conditions

Basis of stock exchange.—The controlling factor in the determination of the offer to the Pere Marquette was recent market prices for the stocks of the carriers affected. The ratios of exchange of Chesapeake & Ohio stocks for stocks of the Pere Marquette were determined originally on August 21, 1945; and, with the exception of provisions later added to the Chesapeake & Ohio new preferred, these terms have remained unchanged.

[fol. 28] *Applicants' thesis.*—With the altered circumstances of control of the Pere Marquette by the Chesapeake & Ohio, and the need now to deal only with an unaffiliated minority, the applicants herein place paramount emphasis upon a single criterion of value. They say that commercial value is the true test of the worth of the Pere Marquette's properties, that the most important factor in determining commercial value is earning power, and that the most available means of appraising earning power are market prices for stocks. Upon this theory, the applicants contend that the ratios of exchange offered to Pere Marquette stockholders are fair.

Objections of interveners.—While dissatisfaction with the proposed merger, or its terms, has been expressed informally by various Chesapeake & Ohio stockholders and

Pere Marquette stockholders, none of the former and only a small number of the latter appeared and participated in the hearing. This fact does not affect the issue, for we are expressly enjoined by the statute to make specific findings with respect to the terms and conditions of transactions proposed under section 5(2), and this we must do if not a single share be in dissent.

Counsel representing holders of Pere Marquette common distinguishes the instant proposal from instances in which the Commission has determined commercial value as a proper basis for acquisition of short lines by the facts that their merger was not involved, and that here the Pere Marquette is a solvent company. He denies that market price of stock is the true basis of determining the value of railroad properties, asserting that stocks sell on an income basis and that, when dividends are not paid, the price is predicated on future dividend prospects. He contends that prevailing market prices for Pere Marquette common do not reflect the improved financial position of the company, and that the applicant's view that historical cost or investment value is without significance, save for rate-making purposes, is contrary to public policy.

Another intervener representing Pere Marquette shares of all three classes contends that the terms of exchange are unduly favorable to the common stockholders. He points out that the Chesapeake & Ohio's present interest is principally in Pere Marquette common, and urges that the common stock is not entitled to consideration until the claims of the preferred stockholders to the par value of their shares plus accrued dividends are fully satisfied. He suggests that, unless those stockholders receive a full measure of protection, they may be forced to have recourse to the courts. He frankly concedes that in recent years Pere Marquette earnings were affected by the war, but argues that it does not follow that its earnings hereafter will decline to the depression levels of the 1930's, and urges that full coverage of the preferred claims is warranted by the excellent condition of the Pere Marquette financially and physically, its record of good earnings in recent years, and its bright prospects for the future.

The third intervener owns 80 shares of Pere Marquette preferred. He contends that the provisions of the preferred stock with respect to cumulative dividends, redemption as a whole at par and accrued dividends, and prefer-

ence on liquidation or dissolution constitute a contract which may not be impaired by the State of Virginia or the State of Michigan in violation of section 10 of the Federal Constitution. This contention is disposed of in the discussion of our jurisdiction, *post*.

All of these interveners prefer to sell out, rather than to become stockholders of the Chesapeake & Ohio; but severally they have suggested or requested various forms of relief, namely, that the application be denied, that the Chesapeake & Ohio be required to cause the Pere Marquette preferred to be called, that the Chesapeake & Ohio be required to divest itself of control of the Pere Marquette, or that we appoint three disinterested persons to appraise each class of stock. Counsel for a fourth intervener requests, and the applicants suggest that, by condition imposed by us herein, Pere Marquette dissenting stockholders be given recourse to or the benefit of equity proceedings in Virginia.

[fol. 29] **Market Price**

Market prices, it was testified for the applicants, furnish the common denominator by which to judge comparative values of various railroad properties, particularly if there is an active market in which the particular securities are traded, because property values, current assets, good will, strategic location, and other like factors are necessarily reflected in the market prices of the securities. Any estimate of prospective earnings necessarily must be predicated, it is said, on the earnings record for past years, adjusted for all foreseeable factors that may increase or decrease the earnings for the future; but consideration must be given also to the ratio of fixed charges to earnings available for that purpose, and to other fiscal requirements, such as debt maturities and physical improvements. The record of earnings over a considerable period, if of sufficient duration to establish the degree of stability of earnings through varying business conditions, is a highly important factor.

In the determination of the ratios of exchange provided in the merger agreement, consideration was given to market prices of the stocks for a period of 6 or 7 years, including the peak prices at which Pere Marquette stocks had sold in small volume over a short period in June 1945. On the basis of closing market prices on the New York Stock Exchange on August 20, 1945, with Chesapeake & Ohio common quoted at

49¼, and Pere Marquette prior preference, preferred, and common stocks quoted at 102, 87, and 28¼ respectively, and of an assumed probable market value of 100 (par) for the Chesapeake & Ohio new preferred (before the change in its provisions), the value of the Chesapeake & Ohio offer to the Pere Marquette, when made, was:

Ratios of exchange	Pere Marquette stocks		
	Common	Preferred	Prior preference
In shares (30ths)			
Chesapeake & Ohio common	15	12	10
Chesapeake & Ohio preferred	.....	24	30
In par value	(100)	(100)	(100)
Chesapeake & Ohio common ($25)	$12.500	$10.00	$ 8.33
Chesapeake & Ohio preferred ($100)	.....	80.00	100.00
Totals	$12.500	$90.00	$108.33
In market price (Note)	$24.625	$99.70	$116.42
Ratio of offer to market price of Pere Marquette stocks, percent	87	115	114

Note: Chesapeake & Ohio stocks, August 20, 1945. This, witnesses for the applicant aver, gives due consideration to accumulated dividends.

Book value, December 31, 1945, after allowance for all accumulated dividends, Pere Marquette common, $109.13 a share, Chesapeake & Ohio 1/2 share, $23.40.

On this basis, the indicated commercial value of the entire stock equity in the Pere Marquette on August 20, 1945, was $34,522,800, in exchange for which the Chesapeake & Ohio would issue $28,949,745, par value, of its stock.

[fol. 30] Much is made in the record of the subsequent enhancement in value, on a generally rising market, of the securities offered to Pere Marquette stockholders because of augmented attractiveness of the Chesapeake & Ohio new preferred, now variously estimated to command a market price of from $110 to $120 a share. As of April 15, 1946, the closing prices for Chesapeake & Ohio common were 59, and for Pere Marquette stocks, 27½, 99 and 125½, respectively. With the new preferred priced at 110, the value of the offer to Pere Marquette stockholders in market price of Chesapeake & Ohio stocks on that date would be $29.50, $111.60, and $129.67, as compared with corresponding market prices for Pere Marquette stocks of $27.50, $99, and $125.50. These prices the stockholders had no opportunity of realizing, inasmuch as the merger proposal came on for hearing 9 days later.

In further support of the applicants' present preoccupation with market price, it is said that commercial value is

the price that property will bring in the market place in transactions between sellers under no compulsion to sell and buyers under no compulsion to buy. It is difficult to see the applicability of this definition in a situation where control of the seller and control of the buyer are in the same hands. Furthermore, it is conceded that market price is unstable, likely to be affected by remote circumstances, and subject to radical change overnight. Market appraisals of prospects could not have been much more mistaken than when they supported a price of $133 a share for Pere Marquette common in 1928. The Pere Marquette's future earnings will be as they may. They may be affected by conditions that affect the market, but they will not be affected by what the market expects that they will be. In the discharge of our duty under the statute to find whether the terms and conditions proposed for the merger are just and reasonable, we cannot confine our inquiry to market opinion, but must give consideration to all relevant elements of value. This, it is said, the market itself considers in appraising the worth of property, and this the Chesapeake & Ohio itself urged in the earlier proceedings.

Earnings

On the subject of past earnings the studies of the applicants do not extend beyond the advent of Chesapeake & Ohio control of the Pere Marquette. In general, the intervening stockholders insist that some weight should be accorded to the Pere Marquette's prosperity during the decade following the first world war.

Change in Management.—Until 1929, the Pere Marquette was independent of the Chesapeake & Ohio. The testimony tends to reflect on the previous Pere Marquette management in charging that it was neglectful of the physical condition of road and equipment, and pursued an extravagant dividend policy at a time of "lush" prosperity. Under different auspices, the Chesapeake & Ohio did not think this in 1928, and itself pursued the same policy through 1930. For reforms occurring since 1937, reference is made to *Chesapeake & O. Ry. Co. Purchase, supra.* It is to be supposed that this wiser concern for efficient management and operation will continue and eventually make for the best interests of stockholders, if public demand for transportation by railroad continues at normal levels.

Changes in economic conditions.—With gradual exhaustion of the timber resources of lower Michigan, salvation came to the Pere Marquette through development in this territory of many important industries engaged in or allied to the production of motor vehicles. The output of completed automobiles shipped by rail reached about the maximum in 1929, and this traffic produced high revenues for the railroad. Subsequently, truck competition appeared, and the consequent effect on rates resulted in reduced revenue from the haul of completed automobiles. Now a tendency exists among automobile manufacturers to establish assembly plants at various points throughout the country, and in Canada; and this has had the effect of reducing the volume of "setup" automobile business. Where motor [fol. 31] vehicle parts are shipped by rail from the central plant to assembly branch plants, the revenue is considerably less than in the case of completed automobiles. In General, divisions of revenue on traffic interchanged between the Pere Marquette and the Chesapeake & Ohio are on the same basis as in effect prior to 1929. During the ensuing decade from 1930 to 1939 the company's railway operating revenues fell off to $37,216,000 in the first year and declined to a low of $21,461,000 in 1932. The next year, with $21,947,000, was not much better, but earnings then improved uniformly to over $32,000,000 in 1936 and 1937, and, after receding to $25,445,000 in 1938, again exceeded $30,000,000 in 1939.

In each of the years 1940-45, in order, railway operating revenues amounted to $33,007,016, $39,048,003, $44,311,307, $55,052,804, $56,302,777, and $51,500.687. With harder use of facilities, the expense of maintaining way and structures was $4,353,334, $5,053,843, $6,122,269, $8,647,832, $9,271,285, and $9,271,285, and of maintaining equipment, $6,552,836, $7,468,478, $8,828,874, $9,453,289, $10,222,245, and $13,707,789. The carrier's tax burden was $2,408,698, $3,403,389, $4,819,071, $8,612,341, $7,164,799, and $1,201,808. It spent for additions and betterments to owned property $1,787,034, $7,958,124, $1,223,674, $1,243,323, $4,785,707, and $3,166,835.[8] Net income amounted to $1,253,067, $3,236,906, $3,569,066, $3,619,520, $3,012,076, and $2,139,121; but the only dividend paid by the company was 5 percent on the prior-preference

[8] Total expenditures for additions and betterments, 1930-45, inclusive, about $40,000,000.

stock in 1945, settling all accumulations to November 1, 1938.

The record indicates that the Pere Marquette was being prepared during this period of favoring circumstances, for inclusion in the Chesapeake & Ohio, a policy in itself not susceptible of adverse criticism.

Chesapeake & Ohio.—The parent company has operated at a profit since 1889, and since the turn of the present century it paid a dividend each year with the single exception of 1915. During the depression years, its operating revenues ranged downward from $131,588,000 in 1930 to $98,709,000 in 1932, then rose to $135,538,000 in 1936, and in 1937-38 varied from $106,376,000 to $127,347,000. It earned net income ranging from $20,682,000 in 1938, to $43,791,000 in 1936. In the years of military preparation and war activity, its annual operating revenues ranged from $132,720,000 in 1940 to $216,536,000 in 1944, and then fell off about $13,000,000 in 1945; and net income, after rising to $44,940,000 in 1941,[9] then declined to $16,380,000 in 1945.

Combined earnings.—By combining operating results of each of the two companies, adjusted only to eliminate intercompany dividends, the applicants show that, of total combined net income of $133,405,000 in the 5 years 1930-34, the Pere Marquette contributed nothing because it sustained losses in each of those years, and contributed nothing to the total combined net income of $294,861,000 for the 10 years 1930-39 because, over this entire period, it sustained a net deficit of $972,000. Considering separately the 5-year period 1935-39, however, the Pere Marquette had total income of $4,131,000, or 2.56 percent of the combined total, and in the 6-year period 1940-45, had total net income of $16,832,000, or 8.27 percent of the combined net income. For the 16-year period its contribution amounted to $15,860,000, or 3.18 percent of the total combined net income. With further adjustment of reported net income to give effect to present interest charges and the resulting increase in Federal income taxes, the indicated ratios of Pere Marquette contributions to total combined net income are, for the 5 years 1930-34, 1.76 percent, for the 5 years 1935-39, 5.76 percent, for the 10 years 1930-39, 3.9 percent, for the

[9] This peak figure was after a tax credit of nearly $12,000,000 resulting from capital losses on sale of securities.

6 years 1940-45, 9.84 percent, and for the 16 years 1930-45, 6.19 percent.

[fol. 32] With the adjustments above mentioned, the Pere Marquette deficit of $5,103,000 in 1930-34 is changed to net income of $2,740,000, net income of $4,131,000 in 1935-39 is increased to $10,276,000, deficit of $972,000 in 1930-39 is changed to net income of $13,016,000, net income of $16,832,000 in 1940-45 is increased to $20,507,000, and net income in 1930-45 of $15,860,000 is increased to $33,523,000. During all of this time the Pere Marquette was under Chesapeake & Ohio control, and total combined net income had the benefit of economies from joint management. If the railroads had been unified for operation, also, the total combined income would have had the benefit of further substantial economies which the applicants expect.

In comparisons that next follow, a close approximation of the *adjusted* average annual net income for the 16 years from 1930 to 1945, inclusive, to that for the 5 years 1935-39 is indicated:

Period	Average net income	Return on investment of		
		at 5%	at 4%	at 3½%
1930-1934 (5 years)	$ 548,000	$10,960,000	$13,700,000	$15,657,000
1930-1939 (10 years)	1,301,600	26,032,000	32,540,000	37,188,857
1940-1945 (6 years)	3,417,833	68,356,660	85,445,825	97,682,371
1930-1945 (16 years)	2,095,187	41,903,740	52,379,675	59,862,485
1935-1939 (5 years)	2,055,200	41,040,000	51,380,000	58,720,000

Taking the period last mentioned as typical of average experience under conditions affected by considerable variation of business generally recovering from the depths of depression, but as yet unaffected by war, and using the rate of return contemplated for the Chesapeake & Ohio's new preferred, a prorata equity of Pere Marquette stock in the company's investment, without regard to preferences, of about $85.50 a share is indicated.

Property Value

Book value; valuation; original cost.—The applicants are not consistent in decrying the value of the Pere Marquette's properties shown by its books as constituting only a basis for fixing rates and return on investment, while urging the desirability of the Pere Marquette's lines as an extension of the Chesapeake & Ohio. In effect the present proposal is for the purchase by the Chesapeake & Ohio of

all the tracks, engines, cars, and other properties and assets of the Pere Marquette, through the means or process called corporate merger. If the Pere Marquette's lines were not already in existence, it seems gravely doubtful that the Chesapeake & Ohio would be willing to pay the great cost of gaining access to the territory served by the Pere Marquette by constructing such lines, even if it were permitted to do so in view of the railroads already in existence in that territory. If, as stated, the Pere Marquette is a natural end-to-end extension of the Chesapeake & Ohio, if purchase by the Chesapeake & Ohio of the Pere Marquette's tracks and ferries is to have the effect of extending Chesapeake & Ohio operation and service beyond Toledo to the Michigan industrial centers, and through them, to Buffalo, on the east, and to Chicago and to Wisconsin railroad connections, on the west, it cannot be said, with any degree of sense, that the cost of providing or replacing these facilities is of minimum relevance to the fairness of the price to be paid for them. Evidently because of their views in this matter, the applicants produced no engineering witness.

The recorded investment of the two carriers, according to their books, the final value thereof for rate-making purposes, and net undepreciated additions and betterments to their properties from the respective valuation dates to December 31, 1945, are as follows:

[fol. 33]

	Chesapeake & Ohio	Pere Marquette
Book value		
Investment in transportation property, less recorded depreciation and amortization	$443,918,965	$114,453,874
Valuation		
Valuation dates	June 30, 1916	June 30, 1915
Final value for rate-making purposes, as of those dates	(a)197,460,975	(b)63,265,071
Additions and betterments, as explained above	412,650,674	74,364,501

(a) 24 Val. Rep. 451
(b) 130 I. C. C. 497

The constructed balance sheet prepared by the applicants to give effect to the acquisition by the Chesapeake & Ohio of the properties of the Pere Marquette, brings over into account 701, road and equipment property, and the surplus accounts, the balances appearing in those accounts in the books of the Pere Marquette. The accounting rules of the Commission require that the original cost of the merged property as found by the Bureau of Valuation shall be

recorded in account 701, and do not permit the bringing over of any balances in the surplus accounts of the merged company. Under these rules the difference between the consideration given for the property and the net of the assets and liabilities recorded, will remain as a debit or credit in account 702-½A, acquisition adjustment. See *Chicago G.W. R. Co. Reorganization*, 247 I.C.C. 193, and *Kansas City S. Ry. Co. - T. & Ft. S. Ry. Co. Merger Accounting*, 263, I.C.C. 563.

Price.—From the viewpoint of public interest, the price proposed to be paid by the Chesapeake & Ohio for the properties and franchises of the Pere Marquette appears to be just and reasonable. The consideration to be given by the Chesapeake & Ohio is as follows:

Cancellation of investment in stock of the Pere Marquette		$ 34,649,968
Proposed new stock, common	$ 7,806,805	
preferred	21,142,940	
	$28,949,745	
Less, held in treasury	5,179,250	23,770,495
Long-term debt of Pere Marquette assumed by the Chesapeake & Ohio:		
Funded debt	59,749,000	
Equipment obligations	6,357,736	
	66,106,736	
Less, held in treasury	10,300,000	55,806,736
Total		$114,227,199

The total is about equal to the Pere Marquette's recorded investment in transportation property, less recorded depreciation and amortization, as of December 31, 1945, $114,453,874. This does not take into account current assets amounting, on the same date, to nearly $22,000,000.

[fol. 34] *Assenting stockholders.*—The applicants contend that the exchange ratios are fair when tested by comparisons of earnings. As to Chesapeake & Ohio common shareholders, it is urged that the merger will not bring about any dilution of their participation in earnings of their company thereafter, because after deduction of the amount of annual dividends on the new preferred stock (all of which will go to Pere Marquette stockholders), $739,903, the remainder of average *adjusted* net income of the Pere Marquette for the 16 years 1930-45 ($2,095,000) would be $1,355,000, or $4.34 a share on the 312,272 shares of common to be issued in the transaction, as compared

with the Chesapeake & Ohio's average *adjusted* net income of $4.17 annually over the same period. And ample assurance that the dividend yield on the present Chesapeake & Ohio common will not be impaired is given by the fact that the average adjusted net income for the past 16 years, on a consolidated basis, is approximately $6,000,000 in excess of total dividend requirements of dividends at $3.50 a share on the new preferred and a continuation of the $3.50 rate on the common stock. In 1945, the Alleghany's income amounted to $2,565,559, of which $2,387,138, or 93.05 percent, was dividends. Of this amount, $1,819,902, or 76.24 percent, was derived from cash dividends amounting to $3 a share on the company's 606,634 shares of Chesapeake & Ohio common.[10] It seems likely that so long as the Chesapeake & Ohio continues to provide the Alleghany's chief means of livelihood, every effort will be exerted to continue dividends on Chesapeake & Ohio common, at least at the prevailing rate. In 1945, for example, the Chesapeake & Ohio paid $3, although it earned only $2.14 a share.

Dissenting stockholders.—With such assurance, it would seem that Chesapeake & Ohio stockholders might well be satisfied. These stockholders have received dividends regularly at high rates on the par value of their stock.

The stockholders of the Pere Marquette common have received no dividends since 1931,[11] and cumulative dividends are in arrears on the preferred since August 1, 1931, and on the prior preference stock since November 1, 1938. On February 1, 1946, the amounts of dividends in arrears on the preferred amounted to $72.50 a share, or a total of $9,011,025, and on the prior preference to $36.25 a share, or a total of $4,060,000.

The applicants contend that the intervening stockholders have exalted notions of their company's prospective earn-

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[10] Exclusive of an extra dividend of one-fortieth share of Pittston Company common, at the time worth 37 cents at market value.

[11] Witnesses for the applicants agree that these stockholders could not expect to receive any dividend for many years.

ings, predicated on its earnings record during a period of unusual influences arising from the war emergency, and the unequal effect on the relative earning power of the two properties, of excess profits taxes and unusual amortization charges, and in this connection point out that in the first quarter of 1946 the Pere Marquette operated at a deficit of $326,971, while the Chesapeake & Ohio earned net income amounting to $8,308,022.

The applicants do, however, make the significant point that on the basis of dividends of $3.50 a share on the Chesapeake & Ohio common and new preferred, the yield on each share of Pere Marquette stock would be:

Common	$1.75
Preferred	4.20
Upon conversion	5.88
Prior preference	4.67
Upon conversion	6.77

On the whole, it would seem that the prospects of Pere Marquette stockholders for returns on their investments would be enhanced by merger of their company into the Chesapeake & Ohio.

[fol. 35] Finance Docket No. 15228—Sheet 30.

The Pere Marquette's prior-preference stock is redeemable, as a whole, at par plus cumulative dividends. In the event of dissolution, liquidation or winding up of the company, voluntary of involuntary, the holders are entitled to be paid in full, out of the company's assets, the par amount of their shares and all accumulated dividends unpaid thereon, before any amounts are paid to holders of the preferred stock or common stock. The preferred also is redeemable, as a whole, at par plus accumulated unpaid dividends, and on liquidation, dissolution or winding up, as before, the holders thereof are entitled to be paid in full, out of the assets of the company, the par amount of their shares and all accumulated dividends from and after January 1, 1919, before any amount is paid out of such assets to holders of the common stock.

Assuming all Pere Marquette stock to be worth book value, the equities of the stockholders, disregarding scrip,

according to their contract with the company, may be stated as follows:

	Total Amount	*Per Share*
Book value, all shares	$85,858,700	
Equity of prior-preference stock	15,679,860	$140.00[12]
Balance for preferred and common	70,178,840	
Equity of preferred stock	21,750,400	175.00
Equity of common stock	48,428,440	107.51

[12] November 1, 1946, assuming no dividend paid since February 1, 1946.

The objection to unqualified acceptance of such calculations is that no assurance can exist as to what the Pere Marquette's assets would bring on *actual* liquidation. If the average 1935-39 earnings, capitalized at 3½ percent, *is* substituted for book value, the calculation would be as follows:

	Total Amount	*Per share*
Investment	$58,720,000	
Equity of prior-preference stock	15,679,860	$140.00
Balance for preferred and common	43,040,140	
Equity of preferred stock	21,750,400	175.00
Equity of common stock	21,289,740	47.26

If it were considered that the preferred and prior-preference stock-holders ought to be satisfied with accruals of dividends for years in which, although not declared, such dividends actually were earned, namely $45 and $30, respectively, the amount left for the common would be $26,138,370, or about $58 a share. In the years 1936-37 and 1940-45, in order, net earnings applicable to the common stock amounted to $3.50, $1.08, 16 cents, $4.56, $5.30, $5.40, $4.06, and $2.13 a share. Declaration of dividends is within the discretion of directors so long as their policy in this regard

does not oppress the stockholders. No dividends on the common were declared or paid in the years mentioned, and while it is not within the Commission's province to pass on the question whether or not this oppressed the stockholders, we properly may observe that other use of funds should make for their long-term best interests in protecting their equities against creditors and in preserving their company's property against deterioration.

[fol. 36] The expectations of Pere Marquette stockholders as stockholders of the Chesapeake & Ohio have been set forth in a previous paragraph. With the exchange, the holders of preferred and prior preference stock are entitled to expect, on the basis of the applicants' testimony, regular annual returns of from $4.20 to $5.88 and from $4.67 to $6.77 a share, respectively, and the holders of Pere Marquette common stock to a regular annual return of $1.75 a share. If, as testified, the prospect of any dividend on the common is indeed many years away, it is evident that, as a practical matter, a Pere Marquette common stockholder would fare much better as the owner of Chesapeake & Ohio common that he has any reasonable expectation of faring under separate operation of his railroad. An annual dividend of $1.75 a share would be equivalent to an annual return of 3½ percent on $50. This is not much under the figure of $58 a share previously mentioned.

Accordingly, considering the Pere Marquette's investment according to its books, other property values, the company's history as to earnings, its future prospects, and the market appraisal of its stocks, all as set forth above, we find that, as to the stockholders of both parties generally, the proposed ratios of exchange, stock issues, and assumptions of indebtedness are just and reasonable.

Jurisdiction

Counsel for a fifth intervener correctly contends that the authority conferred on us by section 5 of the act is exclusive, primary, and plenary. See section 5(11). Counsel contends that the terms and conditions proposed for the merger are not just and reasonable; that they deprive the Pere Marquette preferred stockholders of contract rights and, therefore, are not equitable; and that they violate Michigan laws. He argues that, if we remit the dissenting stockholders to remedies in the State courts, thereby we would decline to exercise our jurisdiction, and so fail to perform our duty

with respect to determining terms and conditions as expressly provided in section 5(2). Furthermore, he suggests, if we should do this without careful renunciation of intention to pass upon contract rights, the dissenters then would be met in the courts by the plea that Congress has placed the jurisdiction with us. Counsel for the Pere Marquette has joined with opposing counsel in debating the dissenters' rights under Michigan laws.

The authority to authorize unification of railroad properties was conferred by Congress in aid of its national transportation policy; and the criterion to be applied by us in the exercise of such authority is that of the controlling public interest, *State of Texas* v. *United States*, 292 U.S. 522. We are to be guided primarily by consideration for adequacy of transportation service, its essential conditions of economy and efficiency, and appropriate provision and best use of transportation facilities, *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, *McLean Trucking Co.* v. *United States*, 321 U.S. 67.

From the beginning, in the initial enactment of the unification provisions by the Transportation Act, 1920, and subsequent amendments, Congress always has had regard for private property involved by requiring us to consider the terms and conditions of unification proposals by carriers; but, when we have determined applications presenting such proposals, the relief from restraints, limitations, and prohibitions of State or Federal law provided by Congress thereupon attaches. *New York Central Securities Corp.* v. *United States*, 54 Fed. (2d) 122; affirmed, *Same* v. *Same*, 287 U.S. 12.[13]

As the Interstate Commerce Act was amended by the Transportation Act of 1940, this relief from restraints, limitations, and prohibitions now is provided in section 5(11). It is difficult to conceive of a restraint or limitation [fol. 37] on contemplated unifications better serving to frustrate the national transportation policy than provisions of State laws for compensation of dissenting stockholders on specified bases. The prospect of facing appraisal of any considerable number of minority shares (possibly as much as 49 percent) well might give pause to potential proponents

[13] For discussion of provisions of the Ohio code prescribing the measure of rental in cases of unification by lease, see the opinion of the District Court, page 130.

of any proposal within the scope of section 5(2) and thus operate to deter contemplated steps toward accomplishment of the unification desideratum of the national policy. The applicants proposed of record that dissenting stockholders of the Pere Marquette be given the same rights of appraisal as given to dissenting stockholders of the Chesapeake & Ohio by the Virginia statute. Counsel, in oral argument, referred to the matter as a commitment and suggested that a condition accordingly be attached to our order herein. However, in stating the desirability of such a condition he conceded that it would have no effect other than upon applicant. The record is clear that applicant has tried to deal fairly, but we conclude that such a condition here is not warranted. This does not mean that the Chesapeake & Ohio and the Pere Marquette do not remain free to settle controversies with dissenting stockholders through negotiation and litigation in the courts.

The Chesapeake & Ohio, as controlling stockholder of the Pere Marquette, has an interest in the proposed merger adverse to the minority, and for that reason the terms and conditions proposed by the applicants compel close scrutiny, *New York Central Securities Corp.* v. *United States*, 54 Fed. (2d) 122. In reaching the conclusion that the terms and conditions proposed by the applicant are just and reasonable, we have undertaken to do this; and, having reached that conclusion, performance of our duty in respect to stockholders is complete, in our opinion, when we make certain that all stockholders of the same class are to be treated alike. See *Denver & S. L. Ry. Co. Control*, 252 I.C.C. 153, 198.

Whether dissenting stockholders, as members of a class created by the merger, are entitled to better treatment under their charter contract with the Pere Marquette is a question not within our province to decide, *Otis & Co.* v. *Pennsylvania R. Co.*, 61 Fed. Supp. 905. Objecting stockholders have the right to present their case before two tribunals, both charged with the duty of protecting their interests, *Cleveland, C., C. & St. L. Ry. Co.* v. *Jackson*, 22 Fed. (2d) 509. See also, *Chicago Junction case*, 264 U.S. 258, *Berg* v. *Cincinnati, N. & C. Ry. Co.*, 56 Fed. Supp. 842, and *Otis & Co., etc., supra*. Possibly the courts may be called upon to determine controversies between dissenting stockholders and their companies. Because of the expense

that might be involved, it is necessary that we consider that possibility, *State of Texas, etc., supra.*

Assuming that the number of dissenting shares may not exceed 2 percent of the total stocks, as contemplated by certain provisions of the merger agreement mentioned above, possibilities of the aggregate cash expenditure required may be explored, on various bases, as follows:

	Amount
Chesapeake & Ohio, on basis of yield:	
(a) 153,147.08 shares, at $60	$ 9,188,825
Pere Marquette common, 9,009.2 shares:	
(b) At book value, $107.51	968,579
(c) On earnings basis, $85.50	770,286
(d) Market price, August 20, 1945, $28.25	254,510
Pere Marquette preferred, 2,485.8 shares:	
(e) At book value, $175	435,015
(f) On earnings basis, $85.50	212,536
(g) Market price, as before, $87	216,265
Pere Marquette prior preference, 2,240 shares:	
(h) At book value, $140	313,600
(i) On earnings basis, $85.50	191,520
(p) Market price, as before $102	228,480
Totals:	
(a), (d), (e), and (h)	10,906,019
(a), (c), (f), and (i)	10,363,167
(a), (d), (g), and (j)	9,888,080

[fol. 38] In addition to receiving title to the Pere Marquette's property and receiving all its current assets, the Chesapeake & Ohio also would receive, into its treasury, 157,588 shares of its own common stock and 638 shares of its new preferred stock in exchange for the Pere Marquette shares which it now owns, and 5,745 shares of its own common and 4,229 shares of new preferred in respect of exchange rights forfeited by Pere Marquette dissenting stockholders; totals, common, 163,333, and preferred, 4,867. These shares the Chesapeake & Ohio intends to sell. Sale of the common at a price roughly equal to the market price for this stock on August 20, 1945, and of the preferred at 110, would produce proceeds amounting to $8,702,020. This amount, together with net current assets to be taken over

in the merger, not only should fully reimburse the Chesapeake & Ohio, but should exceed substantially, any probable expenditure of cash that it might be required to make in connection with the merger.[14] Accordingly, it appears that consummation of the merger will not involve a burden of excessive expenditure.

Marine Operations

The Pere Marquette's car-ferry operations have been described generally above. It owns nine vessels having a ledger value of $8,916,046, of which six are used in service across Lake Michigan and three are used in operating across the Detroit River. In addition to railroad rolling stock, the Lake Michigan ferries handle other traffic. By certificate dated February 23, 1944, issued in *Pere Marquette Ry. Co. Common Carrier Application*, 260 I.C.C. 206, Docket No. W-887, the Pere Marquette was authorized to operate by self-propelled vessels in interstate or foreign commerce, in the transportation of passengers, baggage, and motor vehicles loaded and empty, between the ports of Ludington and Milwaukee, Manitowoc, and Kewaunee. Upon effectuation of the proposed merger, the principal officers and operating personnel of the Pere Marquette presently engaged in operating its vessels will be continued in the surviving company's employment.

The Chesapeake & Ohio's own principal officers and operating personnel have had long experience in the transportation of persons and property by ferries, barges, and carfloats across Hampton Roads, between Newport News and Norfolk, Va. It now operates four tugs, four carfloats, and seven barges between these ports, and also operates two steamers carrying passengers.

While the applicants have assumed that the Commission's determination in *P.M. and B.& L.E.R.R. Cos. Operation of Car-Ferry Boats*, 34 I.C.C. 86, decided May 11, 1915, would accrue to their benefit, as successors of the old Pere Mar-

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[14] At the argument we were informed that the holders of 4.46 percent of the common, 10.15 percent of the preferred, and less than 1 percent of the prior-preference stock of the Pere Marquette and only the holders of about 100 shares of Chesapeake & Ohio common requested appraisal within the time limit prescribed by the Virginia statute.

quette, they ask, if it is considered necessary or desirable, that the application be treated as including, in the general prayer, a request for determination of any questions arising under section 5(14-16), commonly known as the Panama Canal Act.

In its report in the earlier proceeding, the Commission held that the old Pere Marquette was a party to paralleling through all-rail routes via Chicago to ports served by its ferryboats operating on Lake Michigan, and that within the meaning of the act it might compete with such ferryboats; but that it was not shown that its rail lines competed with its ferryboats on the Detroit River. The Commission said:

> [fol. 39] It does not appear that the Pere Marquette Railroad Company owns paralleling rails reaching the ports served by either of these (St. Clair and Detroit) River car ferries. Nor is it a part of a railroad system owning such paralleling rails. Nor does it appear that the Pere Marquette is a party to any paralleling through all-rail routes between such ports, and it does not appear, therefore, that said petitioner does or may compete for traffic with its said ferryboats within the meaning of the act.

The Commission made substantially the same findings with respect to the Lake Michigan operation, except that

> • • • it does appear from tariffs on file with the Commission that this petitioner is a party to paralleling through all-rail routes to said (Wisconsin) ports, by means of which it may compete for traffic with its ferryboats within the meaning of the act.
>
> It appears from the record that these ferryboats are a very essential part of the Pere Marquette Railroad system and enable this petitioner to participate in through transportation to the Northwest, from which it would otherwise be excluded. It further appears that the independent operation of the necessary car ferries extending from its terminus at Ludington would be impracticable, since it appears that no one would be able to operate them independently for what the petitioner could afford to pay an independent ferry for getting its cars across Lake Michigan in competition with the all-rail routes. These car-ferryboats appear

to be operated on fixed schedules to expedite the through movement of freight.

On consideration of all the facts and circumstances, the Commission found that the existing specified service by water on Lake Michigan, met all the requirements of section 5(16), and entered an appropriate order.

The sense of the situation is that when the old Pere Marquette was succeeded through reorganization in 1917, without change in the essential conditions and circumstances theretofore considered by the Commission, the legality of the car-ferry operation by the successor company was, insofar as the Panama Canal Act was concerned, *res adjudicata;* but it cannot be said that that determination is applicable to operation of the ferries by the Chesapeake & Ohio, as proposed. As amended by the Transportation Act of 1940, section 5(14) now provides:

> Notwithstanding the provisions of paragraph (2), from and after the 1st day of July 1914, it shall be unlawful for any carrier, as defined in section 1(3), or (after the date of the enactment of this amendatory section) any person controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

The circumstances present at the time of the previous determination are and, by the proposed merger, would be further changed. Now not only the Pere Marquette's own line to Chicago forms part of through all-rail routes to the [fol. 40] Northwest, but so, also, do the affiliated lines to Chicago owned by the Chesapeake & Ohio and by the Nickel Plate.

In each of the 5 years 1940-44, in order, the volume, in carloads, of freight traffic moved across Lake Michigan on Pere Marquette car ferries between points on or beyond the Chesapeake & Ohio and points in the Northwest was, west-bound, 5,385, 5,321, 6,592, 6,753, and 6,232, of which 4,696, 4,760, 5,904, 6,308, and 5,444 cars were coal; and east-bound, 923, 1,347, 1,810, 1,846, and 1,773, mostly products of agriculture, and manufactures and miscellaneous freight.[15]

So far as the effect on competition with the ferries is concerned, it is plainly evident that they would be benefited, rather than affected adversely by the merger, because on Chesapeake & Ohio coal destined to the Northwest it will be to the best interests of the Chesapeake & Ohio to reserve to itself the longest possible haul, with the consequent advantage of greater proportions of the revenue. In addition, the mileage would be shorter via the car-ferry routes to some of the lower Wisconsin cities.

Alleghany

In addition to its interest in the Chesapeake & Ohio, on April 15, 1946, the Alleghany owned certificates of deposit representing 263,286 shares of Pittston Company common stock,[16] 54 shares of Wheeling & Lake Erie Railway Company prior-lien stock,[17] and 20,000 shares of Atlantic Coast Line Railroad Company common stock,[18] and owned 522,900 shares, or 33.81 percent, of the Missouri Pacific Railroad Company's common stock, and $3,325,000, principal amount, of Missouri Pacific Railroad Company first and refunding mortgage 5-percent bonds, of various series and maturity dates. It also owned, among other securities, $659,000 of first-mortgage bonds of the New Orleans, Texas & Mexico

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[15] This was via Toledo. The total carloads handled were, west-bound, 31,365, 37,510, 37,190, 35,856, and 37,221; east-bound, 39,153, 47,787, 45,146, 48,317, and 49,746.

[16] Deposited with the Empire Trust Company, trustee under a deposit and trust agreement dated June 22, 1945.

[17] Deposited with J. Crawford Biggs, trustee under deposit and trust agreement dated July 30, 1929.

[18] Deposited with the Chase National Bank of the City of New York, trustee under a deposit and trust agreement dated June 14, 1945.

Railway Company and $1,196,000 of first-mortgage bonds of the International-Great Northern Railroad Company, subsidiaries of the Missouri Pacific, $33,000 of Pittston Company 5½-percent cumulative debentures, and $11,152,000 of Missouri Pacific 20-year 5½-percent convertible gold bonds,[19] and held notes of the Pittston Company for $6,375,000, given for loans from the Alleghany Company to enable the maker to redeem shares of its preferred stock heretofore deposited with the Empire Trust Company, as voting trustee, and to purchase other securities.[20]

[fol. 41] An independent director of the Missouri Pacific intervened herein. He contends that the Alleghany exercises control of that corporation and requests that we require that the Missouri Pacific stock owned by the Alleghany be trusteed. Counsel for the Alleghany concedes that upon consummation of the present plan for reorganization of the Missouri Pacific, the Alleghany would receive stock of the new company, but that, pursuant to our determination in *Chesapeake & O. Ry. Co. Purchase, supra,* such stock will have to be deposited under the indenture mentioned in footnote 18. Counsel objects to trusteeing of the stock of the present Missouri Pacific because of the expense of transfer taxes and trustee's fees. The intervenor points out that important functions are delegated to debtors under section 77B of the Bankruptcy Act, as amended, and contends that acquisition by Alleghany of a substantial volume of New York Central Railroad Company stock is an additional reason for the urgency of the requirement that the Missouri Pacific stock be trusteed, and that the existing trust agreement is inadequate. He asks that deposit of the shares of Missouri Pacific stock owned by the Alleghany under a new and appropriate agreement, after a hearing

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[19] Pledged with the Manufacturers Trust Company as part security for a loan of $9,000,000. See footnote 4.

[20] The Alleghany has reported to us, since the hearing herein, that it had purchased 225,400 shares of the common stock of the New York Central Railroad Company; and that it had deposited 162,500 shares, and was about to deposit the remaining 62,900 shares, under the indenture mentioned in footnote 30, as of December 31, 1946; and, later, that it had sold voting trust certificates for 250,400 shares of this stock to the Chesapeake & Ohio.

thereon, be required as a preliminary to any further action herein.

The effect of the order in *Chesapeake & O. Ry. Co. Purchase, supra*, is to require the trusteeing of stock of the Missouri Pacific or any successor corporation that the Alleghany may receive in the reorganization of that company. In addition, the Alleghany has committed itself in this proceeding to deposit under the trust agreement any such stock so received by it. The trust agreement with the Chase National Bank, in that proceeding, contemplates the further depositing of stock such as that here considered. So long as the title and the operation of the Missouri Pacific properties are in the hands of a trustee in bankruptcy, we think the action herein desired by this intervener is not warranted by the facts here of record.

General Conclusions

For reasons hereinbefore discussed, merger of the Pere Marquette into the Chesapeake & Ohio should be of substantial benefit to both parties to the transaction; and should be to the advantage of the public in affording to the Pere Marquette railway a higher degree of stability at times of stress, through increased support of the Chesapeake & Ohio, as owner of the property. Specifically, patrons of the Pere Marquette would have greater assurance of continued service, at least over more important system arteries, and all shippers should reap the advantage of single-line hauls and rates which combination of the two systems will make possible.

Summary of Conditions

The conditions contemplated by our findings herein and included in our order by reference to the statement thereof in this report, are:

1. As to employees who will not be protected by agreements between the carriers and duly authorized representatives of such employees, as indicated above, during the period of 4 years from the effective date of our order herein, the transactions thereby approved and authorized shall not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not

be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order.

2. The Chesapeake & Ohio shall maintain and keep open all presently existing routes and channels of trade via existing junctions and gateways unless and until otherwise ordered by us.

[fol. 42] 3. The Chesapeake & Ohio, before recording in its books acquisition of the properties of the Pere Marquette, first shall submit the related journal entries for our approval.

We find that, subject to the foregoing conditions:

1. Merger of the properties and franchises of the Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company for ownership, management, and operation, and acquisition by the Alleghany Corporation of control, through The Chesapeake and Ohio Railway Company, of the properties, franchises, rights, title, and interests of the Pere Marquette Railway Company herein described, are transactions within the scope of section 5(2); that the terms and conditions proposed are just and reasonable; and that the transactions will be consistent with the public interest;

2. (a) The proposed issue of not exceeding $21,142,940 of 3½ percent convertible preferred stock, consisting of 211,429.4 shares of the par value of $100 each, and $7,806,805 of common stock, consisting of 312,272.2 shares of the par value of $25 each, the sale of all such shares of stock issuable in conversion of shares of stock of the Pere Marquette Railway Company held by The Chesapeake and Ohio Railway Company, the issue from time to time of not exceeding $8,457,176 of additional common stock, consisting of 338,287.04 shares of the par value of $25 each in conversion of the convertible preferred stock, the issue of new certificates of its common stock bearing the provisions of article VI of the merger agreement, the issue in temporary form of certificates for shares of stock in respect of which authority is hereby granted, to be exchangeable for definitive certificates, the issue, in lieu of certificates for fractional shares resulting from the conversion of stocks of the Pere Marquette Railway Company into stock of The Chesapeake

and Ohio Railway Company and from the conversion of the latter's 3½-percent convertible preferred stock into its common stock, scrip certificates in bearer form, exchangeable for full shares represented by such certificates within the periods stated above and in the merger agreement, the issue of certificates for full shares of 3½-percent convertible preferred stock and common stock in exchange for scrip certificates representing such shares, the sale of all shares of its capital stock which, or the right to which, has been forfeited to it by stockholders dissenting from the merger, and (b) the proposed assumption of obligation and liability, as primary obligor, in respect of the payment of the principal of and the interest or dividends on the aggregate amount of indebtedness of the Pere Marquette Railway Company of the nature described above outstanding on the date of the merger, and as guarantor, severally with other proprietary companies of the Toledo Terminal Railroad Company, in respect of the payment of a portion of the interest on $5,800,000 of that company's first-mortgage 4½-percent bonds, by The Chesapeake and Ohio Railway Company, all in connection with the proposed merger, as aforesaid, (1) are for lawful objects within its corporate purposes and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (2) are reasonably necessary and appropriate for such purposes; and

3. (a) Acquisition by the Chesapeake & Ohio and, through it, by the Alleghany, of ownership of the vessels of the Pere Marquette, through merger, will not prevent such vessels from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and will not exclude, prevent, or reduce competition on the Pere Marquette's routes by water; and (b) the Chesapeake & Ohio is fit, willing, and able properly to perform the common carrier service by water now performed by the Pere Marquette, and transfer to the Chesapeake & Ohio of the certificate dated February 23, 1944, [fol. 43] issued to the Pere Marquette in Docket No. W-887, will be consistent with the public interest. If the transaction herein authorized is consummated, the Chesapeake & Ohio will be entitled to a certificate authorizing it to perform the water-carrier service now performed by the Pere Marquette

quette; and, upon notice that such transaction has been consummated, a certificate superseding the certificate heretofore issued to the Pere Marquette in No. W-887 will be issued to the Chesapeake & Ohio.

An appropriate order will be entered, effective 40 days from its date.

[fol. 44] ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 1st day of April, A.D. 1947

Finance Docket No. 15228

Pere Marquette Railway Company Merger, Etc.

No. W-887

Pere Marquette Railway Company Common Carrier Application

Investigation of the matters and things involved in these proceedings having been made, a hearing, having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to conditions numbered 1 to 3, inclusive, merger of the properties and franchises of the Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company for ownership, management, and operation, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

It is further ordered, That, subject to the conditions aforesaid, The Chesapeake and Ohio Railway Company be, and it is hereby, authorized (a) to issue not exceeding $21,142,940 of 3½-percent convertible preferred stock, consisting of 211,429.4 shares of the par value of $100 each, and $7,806,805 of common stock, consisting of 312,272.2 shares of the par value of $25 each, in conversion of all the outstanding capital stock of the Pere Marquette Railway Company; (b) to sell at not less than current market prices, but at not less than par, all shares of the capital stock

issuable in conversion of the shares of stock of the Pere Marquette Railway Company held by The Chesapeake and Ohio Railway Company on the merger date, the proceeds to be used only for capital expenditures; (c) to issue from time to time not exceeding $8,457,176 of additional common stock, consisting of 338,287.04 shares of the par value of $25 each, in conversion of the 211,429.4 shares of 3½-per cent convertible preferred stock; (d) to issue to holders of certificate for its common stock outstanding on the merger date, on a share-for-share basis, new certificates of its common stock bearing the provisions of article VI of the merger agreement; (e) to issue in temporary form certificates for shares of stock in respect of which authority is hereby granted, to be exchangeable for definitive certificates; (f) to issue, in lieu of certificates for fractional shares resulting from the conversion of stocks of the Pere Marquette Railway Company into stock of The Chesapeake and Ohio Railway Company and from the conversion of the latter's 3½-percent convertible preferred stock into its common stock, scrip certificates in bearer form, exchangeable for full shares represented by such certificates within the periods stated in the report and in the merger agreement; (g) to issue from time to time certificates for full shares of 3½-percent convertible preferred stock and common stock in exchange for scrip certificates representing such shares; (h) to sell at not less than current market prices, but at not less than par, all shares of its capital stock, which, or the right to which, has been forfeited to it by stockholders dissenting from the merger, the proceeds to be used only for capital expenditures; (i) to assume obligation and liability, as primary obligor, in respect of the payment of the principal of and the interest or dividends on the aggregate amount of indebtedness of the Pere Mar- [fol. 45] quette Railway Company of the nature described in the report outstanding on the date of the merger; and (j) to assume obligation and liability, as guarantor, severally with other proprietary companies of the Toledo Terminal Railroad Company, in respect of the payment of a portion of the interest on $5,800,000 of that company's first-mortgage 4½-percent bonds; all in connection with the proposed merger.

It is further ordered, That, except as herein authorized, said securities shall not be sold, pledged, repledged, or

otherwise disposed of by The Chesapeake and Ohio Railway Company, unless or until so ordered or approved by this Commission.

It is further ordered, That, The Chesapeake and Ohio Railway Company shall report to this Commission concerning the matters herein involved as required by valuation order No. 24, effective May 15, 1928, and in conformity with the order of the Commission, by division 4, dated August 9, 1946, respecting applications filed under section 20a of the Interstate Commerce Act.

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said securities, or dividends or interest thereon, on the part of the United States.

It is further ordered, That, subject to the conditions aforesaid, acquisition by The Chesapeake and Ohio Railway Company and, through that company, by the Alleghany Corporation, through merger, of ownership of the vessels of the Pere Marquette Railway Company, be, and it is hereby, authorized.

It is further ordered, That, subject to the conditions aforesaid, transfer to The Chesapeake and Ohio Railway Company of the certificate dated February 23, 1944, issued to the Pere Marquette Railway Company in No. W-887 be, and it is hereby, approved; and that, for the purpose of giving effect to this determination, that proceeding be, and it is hereby, reopened.

It is further ordered, That following consummation of the merger herein authorized, The Chesapeake and Ohio Railway Company may perform the water-carrier service heretofore authorized by the certificate aforesaid to be performed by said Pere Marquette Railway Company.

It is further ordered, That, within 20 days from and after consummation of said merger, The Chesapeake and Ohio Railway Company shall file with this Commission (1) a statement, verified by its proper officer, setting forth all pertinent facts concerning said consummation, and (2) an opinion of counsel as to the fact of legal consummation of said merger.

It is further ordered, That, subject to the conditions aforesaid, acquisition by said Alleghany Corporation, through The Chesapeake and Ohio Railway Company, of control of the properties and franchises of the Pere Marquette Railway Company, and of the interests of said Pere Mar-

quette Railway Company in subsidiary or affiliated companies and in leases, operating contracts, and trackage agreements relating to operation over or joint use of the lines of railroad of such companies and of certain other carriers, be, and it is hereby, approved and authorized.

[fol. 46] *It is further ordered*, That, unless said merger be consummated on or before December 31, 1947, this order then shall be of no further force or effect, except as said date may be extended by supplemental order herein.

And it is further ordered, That this order shall be effective 40 days from and after its date.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fol. 47] INTERSTATE COMMERCE COMMISSION

ORDER

Finance Docket No. 15228

PERE MARQUETTE RAILWAY COMPANY MERGER, ETC.

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon further consideration of the record in the above-entitled proceeding and upon consideration of the petitions in behalf of the holders of preferred stock and common stock of the Pere Marquette Railway Company for rehearing and reconsideration of the report and order of Division 4 entered herein on April 1, 1947.

It is ordered, That the effective date of the said order of April 1, 1947, be, and it is hereby, postponed pending the further order of this Commission.

Dated at Washington, D. C., this 2nd day of May, 1947.

By the Commission, Commissioner Mahaffie.

W. P. Bartel, Secretary, (Seal.)

[Vol. 48] ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 20th day of May, A.D. 1947.

Finance Docket No. 15228

PERE MARQUETTE RAILWAY COMPANY MERGER, ETC.

It appearing, That by report and order dated April 1, 1947, in this proceeding, the Commission, by division 4, approved and authorized, among other things, merger of the properties and franchises of the Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company for ownership, management, and operation;

It further appearing, That Joseph A. Bauer, the Pere Marquette Preferred Stockholders' Protective Committee, and Albert E. Schwabacher et al., intervenors, have filed herein petitions for reargument and reconsideration of said determination dated April 1, 1947;

And it further appearing, That the Commission has considered the record herein and the reasons presented in support of said petitions, and has reached the conclusion that good cause for reargument and reconsideration has not been shown:

It is ordered; That said petitions be, and they are hereby, denied.

It is further ordered, That said order herein dated April 1, 1947, by division 4, shall become effective 15 days from and after the date hereof.

By the Commission.

W. P. Bartel, Secretary, (Seal.)

[fol. 49] EXHIBIT 1-B TO COMPLAINT—Filed June 4, 1947

May 23, 1947.

Interstate Commerce Commission
Constitution Ave. & 12th St., N.W.
Washington 25, D. C.

GENTLEMEN:

Re: Before the Interstate Commerce Commission Finance Docket No. 15228

On behalf of the intervenors, Edward Schwabacher et al. in the above entitled proceeding, it is respectfully requested that the Commission stay its order of April 1, 1947 approving the application of merger of the Chesapeake & Ohio Railway Company and Pere Marquette Railway Company. Such stay is requested in order that intervenors may perfect an appeal to the appropriate Federal Court to determine the legality of the Commission's action in failing to provide protection for dissenting shareholders. Intervenors will diligently undertake a review of the Commission's order as promptly as possible in order that the merger agreement may be carried forward at the earliest practicable time.

Intervenors feel that a stay of the Commission's action is necessary if their statutory remedy in the courts is to be effective. We believe that it is the duty of the Commission to protect the rights of dissenting shareholders. This Commission has repeatedly taken that position in the past. In the instant proceeding, relief against this refusal by the Commission to affirmatively protect the rights of intervenors can only be accorded intervenors if approval of the application of merger is withheld until such time as the appropriate Federal Court can determine whether the Commission has fully discharged its duties. If the parties are permitted to carry out their merger plan, it is obvious that it would be too late for the Commission to correct its action approving the merger should the court decide it had failed to protect the rights of intervenors.

If the Commission denies this request for a stay of its order, it will be necessary for intervenors to apply to a Federal Court for a temporary restraining order until the merits of this controversy are settled on review. This would involve both unnecessary time and expense to the Government as well as the parties. It would necessitate the calling of two instead of one three judge courts to pass upon the

issues involved. If, on the other hand, the Commission is willing to grant a stay for a reasonable length of time, it will only be necessary to call one three judge court to pass on the case.

Respectfully submitted, Carl McFarland, 1302 Eighteenth St., N.W., Washington 6, D. C., Counsel for Intervenors.

[fol. 50] Interstate Commerce Commission May 23, 1947.

Copies to R. W. Purcell, 3600 Terminal Tower, Cleveland, Ohio; J. C. Kauffman, 3016 Terminal Tower, Cleveland, Ohio; John C. Shields, 6-206 General Motors Bldg., Detroit, Michigan; A. G. Berse, 160 Fifth Avenue, New York 10, N. Y.; Jacob Shapiro, 225 Broadway, New York 7, N. Y.; Samuel W. Savage, 905 Baldwin Avenue, Norfolk 7, Virginia; E. J. Brennan, 418 Olive Street, St. Louis, Missouri; C. M. Mulholland, 741 Nicholas Bldg., Toledo, Ohio; Geo. H. Gardner, 724 Transportation Bldg., Washington, D. C.

[fol. 51] Exhibit 1-C to Complaint—Filed June 4, 1947

Pere Marquette Railway Company, Law Department

General Motors Building Detroit 2, Michigan

John C. Shields, General Counsel; Norman F. Crawford, Glenn C. Wilber, General Attorneys; Claude H. Buzzard, William R. Althans, Edward H. Goodman, Assistant General Attorneys; Horace L. Walker, General Solicitor; Lawrence Chaffee, General Attorney Richmond 10, Va.; J. C. Kauffman, General Solicitor; John J. Fitzpatrick, General Attorney; James B. Osborne, John S. Marshall, Assistant General Attorneys, Cleveland 1, Ohio; George H. Gardner, Attorney, Washington 6, D. C.

Interstate Commerce Commission May 27, 1947
Constitution Avenue and 12th St., N.W.
Washington 25, D. C.

Gentlemen:

Re: Finance Docket No. 15228

Pere Marquette Railway Company Merger, Etc.

The applicants in this proceeding have received copies of a letter dated May 24th sent to the Commission by Mr.

Carl McFarland, counsel for Intervener Schwabacher, in which Mr. McFarland requests that the Commission stay its order of April 1, 1947, approving the merger of Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company "in order that intervenors may perfect an appeal to the appropriate Federal Court to determine the legality of the Commission's action in failing to provide protection for dissenting shareholders."

The Commission, upon full consideration, made its order of approval effective 15 days from and after May 20, 1947, the date interveners' petition was denied. Thus, interveners were given the ample period of 15 days in which to institute any desired proceeding. They had in excess of two months in which to prepare for any appropriate court proceeding in the event the Commission should deny their request for appraisal. The original order was dated April 1st, effective 40 days from that date, and this date was twice extended. . .

Interveners say that they intend to seek a review of the Commission's order. They have had and still have abundant time to make their application in the usual and orderly way. What they seek is to have the Commission perform a function which the Urgent Deficiencies Act (26 Stat. 219, 28 USC, paragraph 46) lodges with the district court as a discretionary matter. The writ of injunction is a gracious writ which the court may issue or withhold. Certainly it is one which should be withheld under "facts involved in the instant matter."

[fol. 52] The point that unless the Commission stay its order it would necessitate the calling of two, instead of one, three-judge courts is without merit. In the first place, if interveners are to seek the aid of the courts, the case should be presented there in toto. In the second place, if one three-judge court should take jurisdiction, there is no reason why that court should not retain jurisdiction.

These interveners do not contend that the proposed merger is not in the public interest. Mr. McFarland, in his letter to the Commission of May 24th, offers to diligently undertake a court review "in order that the merger agreement may be carried forward at the earliest practicable time." These interveners expect and desire the merger to be consummated, but they seek a price for their stock over and beyond the exchange terms which were ac-

ceptable to the great majority of shareholders and which were found by the Commission to be just and reasonable. If interveners are right in that for which they have been contending in all of their submissions to the Commission and in Mr. McFarland's letter, the consummation of the merger is a condition precedent to any satisfaction of their claims.

Should there be no further postponement of the effective date of the order approving the merger, applicants have planned to consummate the merger not later than June 5, 1947. Pere Marquette's stockholders then would participate in the dividends which have been declared on Chesapeake and Ohio common stock payable July 1, 1947, to stockholders of record June 6, 1947. It is respectfully submitted that holders of only 2100 shares of Pere Marquette stock out of a total of 686,750 shares outstanding should not be permitted to delay the merger further and thus deprive the vast majority of Pere Marquette stockholders of the benefits that will flow to them from the consummation of the merger.

It is submitted that if this Commission should accede to the extraordinary proposal of Mr. McFarland that it grant a stay and thus decide what would be a discretionary matter for the three-judge court, it would have a most discouraging significance to the great majority of Pere Marquette stockholders who want the merger to be consummated at an early date.

In behalf of the applicants and the vast majority of their shareholders and in behalf of the public which the Commission found would be advantaged by the merger, we respectfully urge that the Commission deny the request for a further postponement of the effective date of its order in this proceeding, thus permitting the merger to be consummated by June 5, 1947, and permitting applicants thereafter and in accordance with their declaration to the Commission (applicants' Reply to Petition for Rehearing and Reconsideration, page 15), to institute appropriate appraisal proceedings in the Chancery Court of the City of Richmond, Virginia.

Yours very truly, John C. Shields, 6-206 General Motors Building, Detroit 2, Michigan; Geo. H. Gardner, 724 Transportation Building, Washington 6, D. C.

[fol. 53] Copies to:

Carl McFarland, 1302 Eighteenth St., N. W., Washington 6, D. C.; A. G. Berse, 160 Fifth Avenue, New York 10, N. Y.; Jacob Shapiro, 225 Broadway, New York 7, N. Y.; Samuel W. Savage, 905 Baldwin Avenue, Norfolk 7, Virginia; E. J. Brennan, 418 Olive Street, St. Louis, Missouri; C. M. Mulholland, 741 Nicholas Building, Toledo, Ohio; R. W. Purcell, 3600 Terminal Tower, Cleveland 1, Ohio; J. C. Kauffman, 3016 Terminal Tower, Cleveland 1, Ohio; Glenn C. Wilber, 6-206 General Motors Building, Detroit 2, Michigan.

[fol. 54]

McFarland and Sellers
1302 Eighteenth Street, N.W.
Washington 6, D. C.

Carl McFarland
Ashley Sellers
Robert M. Cooper
Stephen J. Angland
Alberta Brown Murphy

Telephone
Hobart 7371

May 23, 1947

Interstate Commerce Commission
Constitution Ave., & 12th St., N. W.
Washington 25, D. C.

GENTLEMEN:

Re: Before the Interstate Commerce Commission
Finance Docket No. 15226

On behalf of the intervenors, Edward Schwabacher et al. in the above-entitled proceeding, it is respectfully requested that the Commission stay its order of April 1, 1947 approving the application of merger of the Chesapeake & Ohio Railway Company and Pere Marquette Railway Company. Such stay is requested in order that intervenor may perfect an appeal to the appropriate Federal Court to determine the legality of the Commission's action in failing to provide protection for dissenting shareholders. Intervenors will diligently undertake a review of the Commission's order as promptly as possible in order that the merger agreement may be carried forward at the earliest practicable time.

Intervenors feel that a stay of the Commission's action is necessary if their statutory remedy in the courts is to be

effective. We believe that it is the duty of the Commission to protect the rights of dissenting shareholders. This Commission has repeatedly taken that position in the past. In the instant proceeding, relief against this refusal by the Commission to affirmatively protect the rights of intervenors can only be accorded intervenors if approval of the application of merger is withheld until such time as the appropriate Federal Court can determine whether the Commission has fully discharged its duties. If the parties are permitted to carry out their merger plan, it is obvious that it would be too late for the Commission to correct its action approving the merger should the court decide it had failed to protect the rights of intervenors.

If the Commission denies this request for a stay of its order, it will be necessary for intervenors to apply to a Federal Court for a temporary restraining order until the merits of this controversy are settled on review. This would involve both unnecessary time and expense to the Government as well as the parties. It would necessitate the calling of two instead of one three judge courts to pass upon the issues involved. If, on the other hand, the Commission is unwilling to grant a stay for a reasonable length of time, it will only be necessary to call one three judge court to pass on the case.

[fol. 55]

Respectfully submitted, Carl McFarland, 1302 Eighteenth St., N. W., Washington 6, D. C., Counsel for Intervenors.

Copies to:

R. W. Purcell, 3600 Terminal Tower, Cleveland, Ohio; J. C. Kauffman, 3016 Terminal Tower, Cleveland, Ohio; John C. Shields, 6-206 General Motors Bldg., Detroit, Michigan; A. G. Berse, 160 Fifth Avenue, New York 10, N. Y.; Jacob Shapiro, 225 Broadway, New York 7, N. Y.; Samuel W. Savage, 905 Baldwin Avenue, Norfolk, 7, Virginia; E. J. Brennan, 418 Olive Street, St. Louis, Missouri; C. M. Mulholland, 741 Nicholas Bldg., Toledo, Ohio; Geo. H. Gardner, 724 Transportation Bldg., Washington, D. C.

[fol. 56] Pere Marquette Railway Company

Law Department

General Motors Building Detroit 2, Michigan

John C. Shields
General Counsel

Norman F. Crawford
Glenn C. Wilber
General Attorneys

Claude H. Buzzard
William R. Althans
Edward H. Goodman
Assistant General Attorneys

Horace L. Walker
General Solicitor
Lawrence Chaffee
General Attorney
Richmond 10, Virginia
J. C. Kauffman
General Solicitor
John J. Fitzpatrick
General Attorney
James B. Osborne
John S. Marshall
Assistant General Attorneys
Cleveland 1, Ohio
George H. Gardner
Attorney
Washington, D. C.

Interstate Commerce Commission
Constitution Avenue and 12th St., N. W.
Washington 25, D. C.

May 27, 1947.

GENTLEMEN:

Re: Finance Docket No. 15228
Pere Marquette Railway Company Merger, etc.

The applicants in this proceeding have received copies of a letter dated May 4th sent to the Commission by Mr. Carl McFarland, counsel for Intervener Schwabacher, in which Mr. McFarland requests that the Commission stay its order of April 1, 1947, approving the merger of Pere Marquette Railway Company into the Chesapeake and Ohio Railway Company "in order that intervenors may perfect an appeal to the appropriate Federal Court to determine the legality of the Commission's action in failing to provide protection for dissenting shareholders."

The Commission, upon full consideration, made its order of approval effective 15 days, from and after May 20, 1947, the date interveners' petition was denied. Thus, interveners were given the ample period of 15 days in which to institute any desired proceeding. They had in excess of two months in which to prepare for any appropriate court proceeding in the event the Commission should deny their request for appraisal. The original order was dated April 1st, effective 40 days from that date, and this date was twice extended.

Interveners say that they intend to seek a review of the Commission's order. They have had and still have abundant time to make their application in the usual and orderly way. What they seek is to have the Commission perform a function which the Urgent Deficiencies Act (39 Stat. 219, 28 USC, paragraph 46) lodges with the district court as a discretionary matter. The writ of injunction is a gracious writ which the court may issue or withhold. Certainly it is one which should be withheld under "facts involved in the instant matter."

[fol. 57] The point that unless the Commission stay its order it would necessitate the calling of two, instead of one, three-judge courts is without merit. In the first place, if interveners are to seek the aid of the courts, the case should be presented there in toto. In the second place, if one three-judge court should take jurisdiction, there is no reason why that court should not retain jurisdiction.

These interveners do not contend that the proposed merger is not in the public interest. Mr. McFarland, in his letter to the Commission of May 24th, offers to diligently undertake a forward court review "in order that the merger agreement may be carried at the earliest practicable time." These interveners expect and desire the merger to be consummated, but they seek a price for their stock over and beyond the exchange terms which were acceptable to the great majority of shareholders and which were found by the Commission to be just and reasonable. If interveners are right in that for which they have been contending in all of their submissions, to the Commission and in Mr. McFarland's letter, the consummation of the merger is a condition precedent to any atisfaction of their claims.

Should there be no further postponement of the effective date of the order approving the merger, applicants have planned to consummate the merger not later than June 5, 1947. Pere Marquette's stockholders then would partici-

pate in the dividends which have been declared on Chesapeake and Ohio common stock payable July 1, 1947, to stockholders of record June 6, 1947. It is respectfully submitted that holders of only 2100 shares of Pere Marquette stock out of a total of 686,750 shares outstanding should not be permitted to delay the merger further and thus deprive the vast majority of Pere Marquette stockholders of the benefits that will flow to them from the consummation of the merger.

It is submitted that if this Commission should accede to the extraordinary proposal of Mr. McFarland that it grant a stay and thus decide what would be a discretionary matter for the three-judge court, it would have a most discouraging significance to the great majority of Pere Marquette stockholders who want the merger to be consummated at an early date.

In behalf of the applicants and the vast majority of the share holders and in behalf of the public which the Commission found would be advantaged by the merger, we respectfully urge that the Commission deny the request for a further postponement of the effective date of its order in this proceeding, thus permitting the merger to be consummated by June 5, 1947, and permitting applicants thereafter, and in accordance with their declaration to the Commission (applicants' Reply to Petition For Rehearing and Reconsideration, page 15), to institute appropriate appraisal proceedings in the Chancery Court of the City of Richmond, Virginia.

Yours very truly, /s/ John C. Shields, 6-206 General Motors Building, Detroit 2, Michigan; Geo. H. Gardner, 724 Transportation Building, Washington 6, D. C.

[fol. 58] Copies to:

Carl McFarland 1302 Eighteenth St., N.W. Washington 6, D. C. A. G. Berse 160 Fifth Avenue, New York 10, N. Y. Jacob Shapiro 225 Broadway, New York 7, N. Y. Samuel W. Savage 905 Baldwin Avenue, Norfolk 7, Virginia. E. J. Brennan 418 Olive Street, St. Louis, Missouri. C. M. Mulholland 741 Nicholas Building, Toledo, Ohio. R. W. Purcell 3600 Terminal Tower, Cleveland 1, Ohio. J. C. Kauffman 3016 Terminal Tower, Cleveland 1, Ohio. Glenn C. Wilber 6206 General Motors Building, Detroit 2, Michigan.

[fol. 59] IN UNITED STATES DISTRICT COURT

ORDER CONVENING THREE-JUDGE COURT—Entered and Filed June 2nd, 1947

[Title omitted]

A verified complaint by the plaintiffs having been filed herein for an order annulling and suspending the enforcement and setting aside the Decision and Order of the Interstate Commerce Commission Finance Docket No. 15228, dated April 1, 1947, issued by the defendant, Interstate Commerce Commission, and praying further that, pending final determination of the complaint, a temporary stay or suspension of the Commision's Order should be issued and entered;

It is hereby ordered that said complaint be heard on the 4th day of June, 1947, at 2:30 o'clock P. M. Eastern Standard Time before Circuit Judge Armstead M. Dobie and District Judges Alfred D. Barksdale and Sterling Hutcheson.

It is further ordered that this order and complaint be served on the United States of America and the Interstate Commerce Commission by filing a copy thereof and a copy of the complaint with the Secretary of the Interstate Commerce Commission and the Department of Justice.

It is further ordered that, pending final determination of said complaint, the defendants show cause on the 4th day of [fol. 60] June, 1947, before this Court in the City of Alexandria, Virginia, at 2:30 o'clock in the afternoon, Eastern Standard Time, why a temporary stay or suspension of the Commission's Order should not be issued forthwith enjoining the enforcement of said Order issued by the defendant, Interstate Commerce Commission.

Dated this 2nd day of June, 1947.

(S.) Sterling Hutcheson, United States District Judge.

[fol. 61] The Chesapeake and Ohio Railway Company

Annual Meeting of Stockholders to Be Held April 23, 1946

Proxy Statement and Agreement of Merger of Pere Marquette Railway Company Into The Chesapeake and Ohio Railway Company

[fol. 62] The Chesapeake and Ohio Railway Company

Proxy Statement

Annual Meeting of Stockholders April 23, 1946

This proxy statement is being furnished to the stockholders of The Chesapeake and Ohio Railway Company (hereinafter generally called either "Chesapeake" or the "Company") in connection with the enclosed form of proxy for the annual meeting of stockholders to be held on April 23, 1946, or any adjournment thereof, notice of which is also enclosed herewith.

The following matters will be considered at the meeting:

(1) The election of directors;

(2) The adoption and sanction of the Agreement of Merger dated February 19, 1946, providing for the merger of Pere Marquette Railway Company into The Chesapeake and Ohio Railway Company, a copy of which is annexed as Exhibit A to this Proxy Statement, and the adoption of resolutions authorizing the Board of Directors and officers of the Company to take all necessary or appropriate action to carry out the terms of said Agreement of Merger and the merger therein provided for, including compliance with any conditions that may be lawfully imposed by any regulatory body, and the exercise of the authority contemplated by Article VIII of said Agreement to consummate said merger in the absence of votes or assents in the percentages specified therein or to terminate said Agreement;

(3) Such other matters as may properly come before the meeting.

Any proxy given pursuant to this solicitation may be revoked by the person executing it at any time prior to the actual exercise of the powers conferred by such proxy. The proxy herein sought is being solicited on behalf of the management of the Company by authority of its Board of Directors. The cost of this solicitation is being paid by the Company.

It is contemplated that additional solicitation will be made by personal interview, telephone, and telegraph, under the direction of William A. Kissel, 30 Broad Street, New York, N. Y., by not more than 25 specially engaged persons at an

anticipated aggregate cost of $7,000, which will be paid by the Company.

Matters Relating to Election of Directors

Fourteen directors are to be elected. The proxy herein solicited is to be voted for the election as directors of the nominees hereinafter named, and in the event of the death or inability to act of any of the nominees, the proxy committee for the management is authorized to substitute another nominee.

The record date for the annual meeting is March 25, 1946.

Voting Securities and Ownership Thereof

There are outstanding 7,657,354 shares of common stock of the Company of the par value of $25 each. As of March 1, 1946, these shares were held by 83,755 stockholders. No stockholder holds beneficially as much as 10% of the voting securities of the Company.

The Interstate Commerce Commission, under date of June 5, 1945, in Finance Docket No. 14692, approved and authorized control of the Company by Alleghany Corporation, through stock ownership. As of March 15, 1946, Alleghany Corporation beneficially owned 606,634 shares, or [fol. 63] approximately 7.92%, of the Common Stock of the Company. Alleghany Corporation is an associate of Robert R. Young, Allan P. Kirby, Robert W. Purcell, and Leonard P. Ayres, nominees hereinafter named, by reason of their respectively holding the offices of Chairman of the Board, President, Vice-President, and Vice-President, of that Corporation, and is an associate of Mr. Kirby by reason, additionally, of his beneficial ownership of more than 10% of the Common Stock of Alleghany Corporation. Messrs. Young, Kirby and Ayres are directors of Alleghany Corporation. As of March 15, 1946, Mr. Kirby beneficially owned 39,158 shares of Series A Preferred Stock and 500,000 shares of Common Stock of Alleghany Corporation, representing, respectively, 5.87% and 10.95% of the voting power of each such class of stock. As of the same date, Mr. Young beneficially owned 6,200 shares of Prior Preferred Stock, 5,983 shares of Series A Preferred Stock, and 47,106 shares of Common Stock, of Alleghany Corporation, representing, respectively, 5.80%, .90% and 1.03% of the voting power of each such class of stock. The holders of Common Stock

of Alleghany Corporation have one vote for each share. The holders of Prior Preferred Stock, as a class, have the right to elect two directors. The holders of Series A Preferred Stock, as a class, have the right to elect two directors when dividends are in default on this class of stock, as is the case at the present time.

[fol. 64] The Nominees for the Board of Directors

The following information (which, except so far as it is within the knowledge of the Company, has been obtained from the nominees named below) is furnished concerning the nominees, all of whom have been nominated by the Board of Directors:

Name	Principal Occupation	First Became Director in	Common Stock(1) Beneficially Owned as of March 15, 1946	Aggregate Remuneration in 1945(2)	Increase over 1944
Leonard P. Ayres, Cleveland, Ohio	Economic Advisor to the Company and Vice-President, The Cleveland Trust Company	1942	400	$22,500.00(3)	$4,700.00
James G. Blaine, New York, N. Y.	President, The Marine Midland Trust Company of New York	1940	10	$ 1,600.00	$ 200.00(D)
Robert J. Bowman, Detroit, Mich.	President, Pere Marquette Railway Company	1946	151	$51,906.66(4)	$1,276.66
Cyrus S. Eaton Cleveland, Ohio	Chairman of the Board, Steep Rock Iron Mines, Ltd.	1943	100	$ 1,700.00	$ 100.00(D)
Howell B. Erminger, Jr., Chicago, Illinois	President, Miami Corporation	1927	200	$ 2,300.00	$1,170.00(D)
Herbert Fitzpatrick, Huntington, W. Va.	Partner, Fitzpatrick, Strickling & Marshall	1930	116	$ 2,100.00(5)	$ 200.00
Harvey D. Gibson, New York, N. Y.	President, Manufacturers Trust Company	1940(6)	100	$ 300.00	$ 300.00
Henry J. Guild, Adams, Mass.	President, Brightwater Paper Company	1943	5	$ 2,200.00	$ 100.00
Allan P. Kirby, Morristown, N. J.	Management of personal affairs; President of Alleghany Corporation	1942	100(7)	$ 2,000.00	$ 100.00(D)
Wm. H. Lipscomb, Leesburg, Va.	Real Estate	1942	100	$ 1,970.00	$ 170.00(D)
Robert W. Purcell, Cleveland, Ohio	Vice-President & General Counsel of the Company and The New York, Chicago and St. Louis Railroad Company	1946	10	$30,000.00(8)	$8,680.00
Harry C. Thompson, New York, N. Y.	Vice-President, The Continental Bank & Trust Company of New York	1940	10	$ 3,500.00	$1,400.00
Andrew Van Pelt, Philadelphia, Pa.	Insurance and Real Estate Management	1943	250	$ 2,100.00	$ 200.00
Robert R. Young, Newport, R. I.	Chairman of the Board of the Company and of Alleghany Corporation	1937	110	$ 9,300.00(9)	$ 340.00(D)

(D) Decrease.

(1) Of the Company. No nominee owns any other class of securities of the Company.

(2) Consisting, except as noted below, entirely of directors' and committeemen's fees from the Company and subsidiaries.

(3) Includes $20,500 received as salary from the Company and subsidiaries.

(4) Consists of $50,000 received as salary from Pere Marquette Railway Company, $966.66 received as salary from Manistee and Northeastern Railway Company from September 5, 1945, and $940 received as directors fees from Pere Marquette, Railway Company and its subsidiaries.

(5) Mr. Fitzpatrick receives a pension from the Company in the amount of $18,000 per annum. Mr. Fitzpatrick's firm is engaged in the general practice of law, which includes its representation of the Company as State Counsel in West Virginia, for which service it was paid in 1945 the sum of $17,000. In addition, the Company paid Mr. Fitzpatrick's firm during 1945 the sum of $15,000 for special legal services and Western Pocahontas Corporation, a wholly-owned subsidiary of the Company, paid said firm the sum of $3,000 for legal services.

(6) Mr. Gibson was originally elected in 1940. Owing to his engagement with the American Red Cross as Commissioner to Great Britain, he ceased to act as director in August, 1942, and was not a nominee for reelection at the 1943 annual meeting of stockholders. He was reelected to the Board on June 19, 1945.

(7) In addition, Mr. Kirby has a substantial interest in two personal holding companies owning 7,600 shares of the Common Stock of the Company.

(8) Consists of salary received from the Company and its subsidiaries.

(9) Includes $7,500 received as salary from the Company.

[fol. 65] The above-mentioned nominees, if elected, will serve until the next annual meeting of the stockholders and until their successors shall have been elected and shall have qualified. The said nominees have been designated in the Agreement of Merger as directors of the continuing corporation.

All of the above-mentioned nominees have been previously elected directors by the stockholders of the Company, with the exception of Messrs. Bowman and Purcell, who were elected to fill existing vacancies at the meeting of the Board held February 19, 1946.

Robert J. Bowman was elected President of Pere Marquette Railway Company on December 15, 1942, and has since served as President and director of that company, as well as President and director of various subsidiary companies and director of several affiliated railway companies. Prior to December 15, 1942, he was Vice-President in charge of operation and maintenance of Pere Marquette Railway Company.

Robert W. Purcell has, since 1943, been successively Acting General Counsel, General Counsel, and Vice-President and General Counsel of the Company and The New York, Chicago and St. Louis Railroad Company. He is also a Vice-President of Alleghany Corporation and Chairman of the Board of Pathe Industries, Inc. Within the past five years, he has engaged in the general practice of law and has held legal and official positions in various corporations.

Interest of Nominees and Their Associates in Transactions During the Past Year or in Proposed Transactions

The Cleveland Trust Company, an associate of Leonard P. Ayres, is Trustee under two Equipment Trusts of the Company.

The Marine Midland Trust Company of New York, an associate of James [illegible] Blaine, is Trustee under the First Mortgage of The Fort Street Union Depot Company, a subsidiary of Pere Marquette Railway Company.

Manufacturers Trust Company, of New York, an associate of Harvey D. Gibson, is Trustee under two Equipment Trusts of the Company, and is to be Trustee under another Equipment Trust of the Company to be issued during the first half of 1946.

The Continental Bank & Trust Company of New York, an associate of Harry C. Thompson, is Trustee under an Equipment Trust of Pere Marquette Railway Company and an Equipment Trust of The New York, Chicago and St. Louis Railroad Company, subsidiaries of the Company, and is to be Trustee under an Equipment Trust of the Company to be issued during the first half of 1946; and during the past year also acted as depositary and agent in connection with the distribution by the Company to its stockholders of shares of common stock of The Pittston Company.

Remuneration of Officers, Directors, and Others

Information as to the aggregate remuneration received during the past fiscal year by the above-mentioned nominees from the Company and its subsidiaries is given above. The following information is furnished for the same period with respect to the remuneration from the Company and its subsidiaries of each other person who acted as director during said period, and each other person who acted as an officer but not as a director and who received remuneration totaling more than $20,000 during the year:

[fol. 66]

Name	Title	Aggregate Remuneration in 1945	Increse over 1944
L. B. Allen	Vice-President	$24,227.09	$5,627.09
H. P. Henshaw	Vice-President	$32,562.50	$5,052.50
W. C. Hull	Vice-President	$33,375.00	$3,375.00
H. F. Lohmeyer	Secretary and Treasurer	$23,420.00	$3,305.00
A. T. Lowmaster	Executive Vice-President	$50,180.00	.....
R. S. Marshall	Senior Vice-President	$43,970.00	$ 350.00
C. E. Newton	President	$77,620.00	$ 960.00
J. B. Parrish	Vice-President	$30,875.00	$3,375.00
J. P. Routh	Director to June 8, 1945	$ 440.00	$1,540.00(D)
E. M. Thomas	Vice-President	$33,150.00	$2,465.00
W. J. Tuohy	Vice-President	$30,069.00	$4,405.00
W. H. Wenneman	Vice-President	$25,420.00	$1,412.15

(D) Decrease.

During the past fiscal year the Company did not have in operation any formal pension or retirement plan, although a number of pensions were granted by the Board of Directors and paid pursuant to a pension policy in effect for some years past. This policy does not contemplate the setting aside of any funds for pensions, and none were so set aside. Herbert Fitzpatrick, retired Chairman of the Board, received a pension of $18,000. No officer receiving remuneration of more than $20,000 during the past fiscal year received a pension.

No officer, director, or nominee was indebted to the Company during the past fiscal year.

The total remuneration received from the Company and its subsidiaries by all the officers and directors as a group was $502,509.59 in 1945, as compared with $419,757.85 in 1944. During the past fiscal year there were six employees of the Company and its subsidiaries, other than officers and directors, who received from the Company and its subsidiaries remuneration in excess of $20,000 but not more than $50,000. The aggregate remuneration of these six employees was $144,190.00. There were two persons, other than officers and directors of the Company, who received from subsidiaries of the Company remuneration in excess of $50,000 per annum, but not more than $100,000 per annum, namely, the Presidents of The New York, Chicago and St. Louis Railroad Company and Pere Marquette Railway Company. The aggregate remuneration of these two persons was $102,806.66.

The following persons, other than officers, directors, or employees, received aggregate remuneration from the Company in excess of $20,000 in the capacities stated:

Name	Aggregate Remuneration	Capacity in Which Received
The Continental Bank & Trust Company of New York, New York, N. Y.	$ 44,646.80	Services as depositary of stock of The Pittston Company distributed by the Company as an extra dividend July 2, 1945, and as agent for the purchases and sales of fractional receipts for such stock.
Donovan, Leisure, Newton & Lumbard, New York, N. Y.	$ 22,500.00	Legal Services.
Garfield, Harris, Robison & Schafer, Cleveland, Ohio	$ 23,142.00	Architectural and Engineering Services.
James D. Miller and Company, New York, N. Y.	$ 21,500.00	Accounting Services.
J. P. Morgan & Co. Inc., New York, N. Y.	$104,933.12	Services as transfer agent and fiscal agent.
Thompson, Hine & Flory, Cleveland, Ohio	$ 26,750.00	Legal Services.

[fol. 67] Matters Relating To the Merger of Pere Marquette Railway Company Into the Chesapeake and Ohio Railway Company

An Agreement of Merger was executed by the Boards of Directors of Chesapeake and Pere Marquette Railway Company (hereinafter generally called "Pere Marquette"), and by said companies as well, on February 19, 1946. The

Agreement provides for the merger of Pere Marquette into Chesapeake, which is to continue as a corporation of the Commonwealth of Virginia.

The Boards of Directors of the two companies, after careful consideration of the matter, have determined that the merger will result in greater efficiency and economy of operation, management, and financing, and will be in the public interest. The principal savings will consist of (1) reduction in administrative and office expenses by having one administrative organization only, instead of two such organizations, (2) savings in accounting for division of revenues, equipment rents, and other joint expenses, (3) reduction in the number of reports made to Federal and State regulatory bodies, (4) savings from consolidation of off-line traffic offices, and (5) savings in interest charges resulting from the anticipated refunding of bonded indebtedness. The amount of the economies expected to be derived from the foregoing and from such other changes in operation as may be feasible is estimated to be approximately $500,000 per annum within five years from the effective date of the proposed merger. While Chesapeake and Pere Marquette have been separately operated up to the present time, there has been close collaboration between the two roads through joint officers and otherwise since Chesapeake acquired control of Pere Marquette by stock ownership in 1929.

Upon consummation of the merger, the Company will qualify to do business in the State of Michigan and in all other jurisdictions in which Pere Marquette is qualified to do business. It will operate lines of railroad in the United States and Canada aggregating approximately 5,000 miles. A map showing the lines of railroad operated by each of the companies is annexed hereto as Exhibit B.

Action to Be Taken at Meeting

The Agreement of Merger is subject to the approval of the stockholders of both Chesapeake and Pere Marquette and will be considered at the annual meetings of those companies to be held on April 23, and May 7, 1946, respectively. The merger is also subject to authorization and approval by the Interstate Commerce Commission. Application for such authorization and approval has been made to the Interstate Commerce Commission, and said applica-

tion is set for hearing at Washington, D. C., on Wednesday, April 24, 1946, at 9:30 o'clock a. m.

At the meeting of the stockholders of this Company, resolutions will be submitted for adoption by the stockholders adopting and sanctioning the Agreement of Merger and authorizing the Board of Directors and officers of the Company to take all necessary or appropriate action to carry out the terms of the Agreement of Merger and the merger therein provided for, including compliance with any conditions that may be lawfully imposed by any regulatory body, and the exercise of the authority contemplated by Article VIII of the Agreement of Merger to consummate said merger in the absence of votes or assents in the percentages specified therein, or to terminate said Agreement.

The proxy herein solicited is to be voted for the adoption of said resolutions, unless otherwise directed.

You are urged to read the Agreement of Merger in its entirety. For your convenience, a summary of its principal provisions is set forth below.

Bases of Conversion of Pere Marquette Stock

Chesapeake has outstanding 7,657,354 shares of Common Stock, which will not be disturbed in this transaction.

[fol. 68] Pere Marquette, a Michigan corporation, has outstanding 111,999 shares of 5% Cumulative Prior Preference Stock, 124,288 shares of 5% Cumulative Preferred Stock (of which Chesapeake owns 13,950 shares), and 450,448 shares of Common Stock (of which Chesapeake owns 313,900 shares).

Upon consummation of the merger, Chesapeake will take over all of the assets and assume all of the obligations and liabilities of Pere Marquette, and will issue its 3½% Convertible Preferred Stock and Common Stock in exchange for stocks of Pere Marquette on the following bases:

One share of 3½% Convertible Preferred Stock and ⅓ of one share of Common Stock for each share of 5% Cumulative Prior Preference Stock of Pere Marquette (including all accrued and unpaid dividends thereon as of the Merger Date);

Eight-tenths of one share of 3½% Convertible Preferred Stock and 4/10 of one share of Common Stock for each share of 5% Cumulative Preferred Stock of Pere Marquette (including all accrued and unpaid

dividends thereon as of the Merger Date); and

One-half of one share of Common Stock for each share of Common Stock of Pere Marquette.

The Agreement of Merger provides that shares of Chesapeake stock are to be issued in conversion of shares of Pere Marquette owned by Chesapeake and that such shares, after consummation of the merger, are to be held by Chesapeake in its treasury, subject to sale as hereinafter noted.

Scrip will be issued in lieu of fractional shares, exchangeable in appropriate amounts for full shares.

On February 1, 1946, the accrued and unpaid dividends on Pere Marquette Prior Preference Stock amounted to $36.25 per share, or an aggregate of $4,060,000, and the accrued and unpaid dividends on Pere Marquette Preferred Stock amounted to $72.50 per share, or an aggregate of $9,011,025. So long as dividends are in arrears on the Prior Preference Stock, no dividends may be paid on the Preferred Stock, and so long as any dividends are in arrears on the Preferred Stock, no dividends may be paid on the Common Stock.

The merger will dispose of these arrearages on the Prior Preference Stock and the Preferred Stock of Pere Marquette. Under the terms of the Agreement of Merger, the Prior Preference Stock and the Preferred Stock, including all accrued and unpaid dividends on both classes as of the Merger Date, and the Pere Marquette Common Stock, will be exchangeable for shares of Chesapeake stock, upon which dividends will be payable out of the earnings or surplus of the continuing corporation when and as declared by its Board of Directors.

There are attached hereto as Exhibits C-12 and C-13, tabulations showing the capitalization of each of the roads, including the amount of long term funded debt, and Exhibit C-17 showing the class and aggregate amount of securities of Chesapeake which will be issued to the holders of each of the three classes of Pere Marquette stock.

The following tabulation taken from Exhibits C-7, C-8, and C-9 shows (a) for Chesapeake, (b) for Pere Marquette, and (c) on a consolidated basis for the continuing corporation, for the period 1930 to 1945, inclusive, the following: (1) operating revenues, (2) net income as reported, (3) net income adjusted by substituting interest on debt outstanding December 31, 1945, for interest on debt

as reported in the respective years, diminished by the increased amount of taxes on income which would have resulted from the reduced interest charges and (as to the continuing corporation) by eliminating intercompany dividends and the resultant taxes, (4) dividend requirements of the preferred stocks of Pere Marquette and of the continuing corporation, and the balances of adjusted net income available for each class of stock, and (5) per share computation of earnings on common stock on the adjusted earnings basis:

[fol. 69]

The Chesapeake and Ohio Railway Company
(000's omitted except in last column)

Year	Operating Revenues	Net Income as Reported	Adjusted Net Income	Dividend Requirements—Prior Preference Stock	Balance for Preferred and Common Stock	Dividend Requirements—Preferred Stock	Balance for Common Stock	Adjusted Net Income per Share of Common
1930	$131,588	$34,145	$36,962	—	—	—	$36,962	$4.83
1931	119,540	26,696	29,885	—	—	—	29,885	3.90
1932	98,709	23,528	26,449	—	—	—	26,449	3.45
1933	105,953	28,240	30,896	—	—	—	30,896	4.03
1934	109,475	28,062	30,447	—	—	—	30,447	3.98
1935	114,025	31,040	33,451	—	—	—	33,451	4.37
1936	135,538	43,791	46,578	—	—	—	46,578	6.08
1937	127,347	34,563	36,623	—	—	—	36,623	4.78
1938	106,376	20,682	22,448	—	—	—	22,448	2.93
1939	118,722	27,343	28,933	—	—	—	28,933	3.78
1940	132,720	33,591	34,263	—	—	—	34,263	4.47
1941	150,237	44,940	45,300	—	—	—	45,300	5.92
1942	181,810	33,154	33,263	—	—	—	33,263	4.34
1943	208,512	31,359	31,431	—	—	—	31,431	4.10
1944	216,536	27,340	27,359	—	—	—	27,359	3.57
1945	203,332	16,380	16,429	—	—	—	16,429	2.15

Pere Marquette Railway Company
(000's omitted except in last column)

1930	$ 37,206	$ 2,015	$ 2,986	$560	$2,426	$621	$ 1,805	$4.00
1931	27,338	d 1,863	d 108	560	d 668	621	d 1,289	d2.86
1932	21,435	d 3,045	d 1,252	560	d1,812	621	d 2,433	d5.40
1933	21,934	d 1,599	109	560	d 451	621	d 1,072	d2.38
1934	24,591	d 611	1,005	560	445	621	d 176	d .39
1935	28,470	1,634	2,976	560	2,416	621	1,795	3.98
1936	32,459	2,758	3,793	560	3,233	621	2,612	5.80
1937	32,229	1,669	2,728	560	2,168	621	1,547	3.43
1938	25,445	d 2,259	d 808	560	d1,368	621	d 1,989	d4.42
1939	30,233	329	1,587	560	1,027	621	406	.90

[fol. 69]

The Chesapeake and Ohio Railway Company
(000's omitted except in last column)

Year	Operating Revenues	Net Income as Reported	Adjusted Net Income	Dividend Requirements—Prior Preference Stock	Balance for Preferred and Common Stock	Dividend Requirements—Preferred Stock	Balance for Common Stock	Adjusted Net Income per Share of Common
1940	33,007	1,253	2,300	560	1,740	621	1,119	2.48
1941	39,048	3,237	4,193	560	3,633	621	3,012	6.69
1942	44,311	3,571	4,413	560	3,853	621	3,232	7.18
1943	55,053	3,620	3,753	560	3,193	621	2,572	5.71
1944	56,303	3,012	3,366	560	2,806	621	2,185	4.85
1945	51,501	2,139	2,482	560	1,922	621	1,301	2.89

d—deficit.

[fol. 70]

Consolidated

The Chesapeake and Ohio Railway Company

Pere Marquette Railway Company
(000's omitted except in last column)

1930	$168,794	$36,160	$38,256	$—	$—	$701	$37,555	$4.81
1931	146,878	24,833	29,349	—	—	701	28,648	3.67
1932	120,144	20,483	25,197	—	—	701	24,496	3.14
1933	127,887	26,641	31,005	—	—	701	30,304	3.88
1934	134,066	27,451	31,452	—	—	701	30,751	3.94
1935	142,495	32,674	36,428	—	—	701	35,727	4.58
1936	167,997	46,549	50,312	—	—	701	49,611	6.35
1937	159,576	36,232	39,418	—	—	701	38,717	4.96
1938	131,821	18,423	21,640	—	—	701	20,939	2.68
1939	148,955	27,672	30,520	—	—	701	29,819	3.82
1940	165,727	34,844	36,563	—	—	701	35,862	4.59
1941	189,285	48,177	49,493	—	—	701	48,792	6.25
1942	226,121	36,724	37,675	—	—	701	36,974	4.73
1943	263,565	34,979	35,010	—	—	701	34,309	4.39
1944	272,839	30,352	30,735	—	—	701	30,034	3.85
1945	254,833	18,519	18,911	—	—	701	18,210	2.33

[fol. 71] Amount of Capital Stock Upon Consummation of Merger

The shares of Chesapeake Common Stock issuable in accordance with the Agreement of Merger will be part of a total of 12,000,000 shares of authorized Common Stock of the par value of $25 each, and the shares of 3½% Convertible Preferred Stock thus to be issued will be part of a total issue of 650,000 shares of Preferred Stock of the par value of $100 each authorized under the Agreement of Merger.

Giving effect to the issuance of 3½% Convertible Preferred Stock and Common Stock of Chesapeake in exchange for all Pere Marquette shares, including shares owned by Chesapeake, the capital stock of Chesapeake, disregarding fractions of shares, will be:

	Shares of Preferred	Shares of Common
Outstanding with public	200,269(a)	7,807,096
Held in treasury	11,160(a)	162,531
Initially reserved for conversion of 3½% Convertible Preferred Stock	—	338,287
Unissued	438,571	3,692,086
Totals	650,000	12,000,000

(a) 3½% Convertible Preferred Stock

The remaining 438,571 shares of authorized but unissued Preferred Stock and the remaining 3,692,086 shares of authorized but unissued Common Stock, and all shares of Preferred Stock and Common Stock at any time held in the treasury of the Company, including any shares of either class issuable in conversion of shares of Pere Marquette owned by Chesapeake, and any such shares becoming available by reason of dissent from the merger, may be sold by the Company at such time or times and for such price or prices as the Board of Directors may determine, without further approval of the stockholders, subject to any necessary authorization by regulatory bodies. There is no present intention to issue any of such shares (other than shares becoming available by reason of dissent from the merger), but they will be available for issuance in connection with any program of expansion, unification, or refinancing, or for any other proper corporate purpose.

The 38,571 shares of authorized but unissued Preferred Stock may be issued with such cumulative dividend rates, redemption prices, and liquidation prices as the Board of Directors may fix at the time of issuance, and the Board may also determine whether or not such stock shall be convertible into Common Stock, and if so, at what price, and whether it shall have the benefit of any retirement or sinking fund in addition to the Retirement Fund hereinafter described. No shares of Preferred Stock in addition to the 650,000 shares described may be authorized except with the approval of the holders of at least two-thirds of all shares of Preferred Stock then outstanding.

Terms of 3½% Convertible Preferred Stock

The shares of 3½% Convertible Preferred Stock issuable to holders of Prior Preference and Preferred Stock of Pere Marquette will, as previously stated, be part of a total issue of 650,000 shares of Preferred Stock of the par value of $100 each authorized by the Agreement of Merger. Dividends on the 3½% Convertible Preferred Stock will be cumulative at the rate of 3½% per annum from the date upon which the merger becomes effective, such dividends being payable quarterly on the first days of February, May, August, and November.

Each share of the 3½% Convertible Preferred Stock will initially be convertible into 1.6 shares of Common Stock, the initial conversion price of the Common Stock being $62.50 per share. Provision is made for adjustment (but only in multiples of 1/40th of a share) in the number of shares of Common Stock deliverable upon conversion in the event the Common Stock shall be combined into a less number of shares or subdivided into a greater number of shares; or in the event additional Common Stock shall at any time be issued for a consideration less than the conversion price [fol. 72] then in effect, or shall be issued as a stock dividend or otherwise without consideration. The issuance of securities convertible into Common Stock, or of rights, warrants, or options to purchase Common Stock, will be treated as an issuance of Common Stock, in the total maximum number of shares necessary to permit conversion or exchange of such convertible securities, or the exercise of such rights, warrants, or options; and the amount received or receivable by the Company as consideration for the issue of such

convertible securities, rights, warrants, or options, plus the minimum aggregate amount, if any, payable to the Company upon conversion, exchange, or exercise thereof, shall be deemed to be the consideration actually received for such Common Stock. In computing adjustments in the conversion ratio, shares of Common Stock held in the treasury of the Company will be deemed to be outstanding shares. No adjustment of the conversion ratio will, however, be made on account of any of the following issues of Common Stock: (a) shares issued or issuable in conversion of shares of Pere Marquette, (b) shares issued upon conversion of any securities having conversion rights into Common Stock, and (c) shares theretofore acquired by the Company and held in its treasury. Additional provisions deal with the conversion rights in the case of a reclassification or other adjustment of the capital stock of the Company and in the case of a subsequent consolidation or a merger involving the Company.

The 3½% Convertible Preferred Stock will, at the option of the Company, be redeemable, in whole or in part, upon at least 30 days notice, at $105 per share plus dividends accrued or in arrears. The redemption date will not be earlier than November 1, 1950, and thereafter will be only a dividend payment date, although a call for redemption may be issued at any time prior to November 1, 1950.

If, upon issuing a call for redemption of all of the outstanding shares of 3½% Convertible Preferred Stock, the Company shall deposit in trust the funds necessary for redemption, including dividends to the redemption date, and shall also deposit in trust the number of shares of its Common Stock necessary to convert all of its outstanding 3½% Convertible Preferred Stock, such stock shall no longer be deemed to be outstanding for any purpose, and each holder of such stock shall, thereafter, have only the right to receive, at his election, either the redemption price of his shares, including unpaid dividends to the redemption date, or the number of shares of Common Stock into which his Preferred Stock is convertible. Until an election is made, the depositary will distribute to each holder, on the regular dividend payment dates, an amount equal to dividends at the rate of 3½% per annum out of the deposited funds.

In the opinion of counsel for the Company, the deposit of funds for redemption of the 3½% Convertible Preferred

Stock, pursuant to the provisions of the Agreement of Merger summarized in the preceding paragraph, would not constitute a closed transaction resulting in the realization of gain or loss to the stockholders at that time.

In the event of voluntary liquidation or dissolution, the 3½% Convertible Preferred Stock will be entitled to $105 per share plus dividends accrued or in arrears, and, in the event of involuntary liquidation or dissolution, to $100 per share plus such dividends. A merger of the Company into any other corporation, or merger of any other corporation into the Company, or consolidation of the Company with any other corporation, or a sale or transfer of the property of the Company as or substantially as an entirety will not be deemed to be a liquidation, dissolution, or winding up of the Company.

Within 30 days after the merger becomes effective, the Company is to set aside $250,000 as a Retirement Fund for the purchase of 3½% Convertible Perferred Stock and any other Preferred Stock that may be issued. So long as dividends on all outstanding Preferred Stock shall have been paid for all past dividend periods, the Company shall, on the first day of March in the year succeeding the first full calendar year after the merger has become effective, and on the first day of March in each year thereafter, set aside in the Retirement Fund a sum equal to 5% of its net income after fixed charges for the preceding calendar year less an amount equal to dividends payable during such year on all outstanding Preferred Stock and a dividend allowance [fol. 73] of $3.50 per share on the outstanding Common Stock, such sum in no event to be in excess of the amount necessary to bring the Retirement Fund up to $1,000,00. The Retirement Fund will be held by the Company, to be used on such occasions as the Board of Directors in its sole discretion may determine, for the purchase and cancellation of Preferred Stock of any series, at not more than the redemption price of the stock purchased. There is no affirmative requirement that monies in the Retirement Fund be used for the purchase of Preferred Stock, and if not so used, the amount set aside for the Retirement Fund would not exceed $1,000,000 in the aggregate.

Voting and Preemptive Rights

Preferred and Common Stock will vote as a single class, each share being entitled to one vote, except that, as noted above, the authorized Preferred Stock shall not be increased without the approval of at least two-thirds of all Preferred shares then outstanding.

Holders of Preferred Stock will have no preemptive rights to purchase any stock or other securities of the Company.

Holders of Common Stock will have preemptive rights to purchase, at such price as may be fixed by the Board of Directors, stock of any class which may be issued for cash, as well as any securities issued for cash that may be convertible into stock or that may be issued with stock purchase warrants attached, except shares acquired by the Company in conversion of shares of Pere Marquette owned by it, shares becoming available by reason of dissent from the merger, and any other shares at any time acquired or reacquired by the Company and held in its treasury, unless such rights shall have been waived by the vote of at least two-thirds of all of the shares of Common Stock then outstanding.

Miscellaneous Provisions of Agreement of Merger

The Company will have the right, unless payments to the Retirement Fund are in arrears, to purchase shares of its capital stock of any class, and may cancel such shares, or hold them as treasury stock, or resell them at such price as may be approved from time to time by the Board of Directors and authorized by the Interstate Commerce Commission. It shall not, however, purchase less than the whole of its outstanding Preferred Stock or any of its Common Stock if dividends on the Preferred Stock are in arrears for one or more calendar years, and it shall not purchase any of its Preferred Stock at a price in excess of the redemption price. Monies in the Retirement Fund may be applied to the purchase of Preferred Stock at any time.

The merger is not to become effective until the holders of at least 98% of the Common Stock of Chesapeake and at least 98% of each class of outstanding stock of Pere Marquette (excluding any shares held by Chesapeake) shall have voted for or irrevocably assented thereto, unless the

Boards of Directors of the two companies shall determine to proceed upon the votes or assents of smaller percentages. In the absence of the 98% vote or assent specified, the board of directors of either company may elect to abandon the merger, and thereupon the Agreement shall be terminated. It is the present intention of the Board of Directors of this Company to consummate the merger if it is approved by holders of shares of both companies sufficient to satisfy the statutory requirements of the States of Virginia and Michigan, unless the Board shall be of the opinion that, in view of all the circumstances, the merger is impracticable or undesirable. The Board does not expect to consummate the merger if, by reason of potential liability to stockholders who have dissented or may dissent therefrom, the Board deems it not to be in the best interests of the Company to proceed with the merger.

The by-laws of Chesapeake, as they shall exist at the effective date of the merger, except in so far as they may be inconsistent with the Agreement of Merger, shall continue to be the by-laws of the Company.

[fol. 74] The Agreement of Merger contains many other provisions with respect to the carrying out of the merger, the rights of the stockholders, and the administration of the affairs of the Company after the consummation of the merger.

Requirements for Consummation of the Merger

Section 3822 of the Code of Virginia of 1919, as amended, requires that an agreement of merger shall be adopted by a majority of all of the votes cast at the meeting of stockholders. Section 22.233 of Michigan Statutes Annotated provides that an agreement of merger must be sanctioned by a majority vote of the stockholders of each class of stock having voting powers. As previously stated, authorization and approval of the Interstate Commerce Commission is also required, and the consummation of the merger is further subject to conditions prescribed in the Agreement of Merger.

After thorough study and consideration, your Board of Directors has concluded that the merger is in the best interests of the stockholders of this Company and recommends approval of the Agreement of Merger and the merger provided for therein.

Statutory Rights of Dissatisfied Stockholders

Sections 3822-a and 3822-b of the Code of Virginia of 1919, as amended, which provide a remedy for dissatisfied stockholders, are set forth in full as Exhibit D, attached hereto. The statutes of Michigan contain no provision dealing with this subject.

Financial Statements, Record of Dividends, and Market Prices

Attention is called to the financial statements of Chesapeake and Pere Marquette annexed hereto as Exhibits C-1 to C-15, inclusive, and C-16. Included in these financial statements are schedules of securities owned by Chesapeake and Pere Marquette. It will be noted that Chesapeake's principal investments in securities of other carriers are in Pere Marquette, The New York, Chicago and St. Louis Railroad Company (Nickel Plate), and The Wheeling and Lake Erie Railway Company. A proposal made by Chesapeake in August, 1945, for unification with Pere Marquette, Nickel Plate, and Wheeling was approved in September of that year by the Boards of Directors of the three roads last named, but the proposal was later withdrawn because Chesapeake was unwilling to meet the demands of a group of Nickel Plate Preferred Stockholders for better terms.

At the time this proposal was withdrawn, a new proposal, which is embodied in the Agreement of Merger, was made by Chesapeake to Pere Marquette.

On December 4, 1945, as a result of negotiations initiated by Nickel Plate, Chesapeake offered to sell to Nickel Plate its certificates of deposit for 78,145 shares of Wheeling and Lake Erie common stock at $70 per share, subject to authorization and approval by the Interstate Commerce Commission. Contingent on the purchase by Nickel Plate of the certificates of deposit representing the aforesaid common stock, Chesapeake has granted Nickel Plate an option to purchase on or before December 4, 1946, its certificates of deposit for 115,369 shares of Prior Lien Stock and 1,658 shares of Preferred Stock of Wheeling and Lake Erie at prices of $115 and $105 per share, respectively. The Company has no present plans for merging with Nickel Plate or Wheeling and Lake Erie, or for the purchase of additional securities of either company, but no representation is or can be made at this time regarding the possibility

of any unification with either of those companies or the acquisition of any additional securities of such companies.

Further financial statements of Chesapeake and Pere Marquette are on file at the office of the Interstate Commerce Commission, Washington, D. C., at the office of the Securities and Exchange Commission, Philadelphia, Pa., and at the office of the New York Stock Exchange. Further financial statements of Pere Marquette are also on file at the office of the Boston Stock Exchange.

[fol. 75] The annual report of the Company for the year ended December 31, 1945, will be mailed to all stockholders in the near future.

Regular dividends were paid quarterly on Pere Marquette Prior Preference Stock from the date of issuance in 1917, to August 1, 1931, inclusive. Dividends were paid intermittently from December, 1921, to August 1, 1931, on the Preferred Stock, covering all accumulations to August 1, 1931. Dividends were paid on the Common Stock at varying rates in each year from 1923 to 1931. Additional dividends paid on the Prior Preference Stock in 1936 and 1937 settled all accumulations to November 1, 1937. No further dividends were declared until 1945, during which year a total of $5 per share was declared on the Prior Preference Stock, settling all accumulations to November 1, 1938.

Chesapeake has paid dividends on its Common Stock in every year but one (1915) since 1898. Beginning October 1, 1940, the regular dividend rate has been 75¢ quarterly, or $3 per year. During this period, extra dividends have also been paid as follows: 1940, 62½¢; 1941-1944, 50¢ per share each year; and 1945, 1/40th share of common stock of The Pittston Company, which at its then market value was equivalent to 37¢ per share of Chesapeake Common Stock.

The high and low sale prices on the New York Stock Exchange of the Common Stock of Chesapeake, and of the Prior Preference, Preferred, and Common Stocks of Pere Marquette, for each quarterly period in the years 1944 and 1945, and monthly thereafter to March 15, 1946, are set forth in a schedule attached hereto marked Exhibit C-16.

Upon the consummation of the merger, application will forthwith be made by the Company to list on the New York Stock Exchange the shares of 3½% Convertible Preferred Stock and the additional shares of Common Stock of the Company to be issued upon consummation of the merger.

Securities of Chesapeake, Pere Marquette, and Alleghany

Corporation Beneficially Owned by the Officers and Directors of the Company and of Pere Marquette, and by their Associates.

A tabulation of the securities of Chesapeake, Pere Marquette, and Alleghany Corporation beneficially owned by the officers and directors of the Company and the officers and directors of Pere Marquette, and by the associates (as defined by the proxy rules of the Securities and Exchange Commission) of such officers and directors, as of March 15, 1946, is attached hereto as Exhibit C-18. The information therein contained, except so far as it is within the knowledge of the Company, has been obtained from the several persons named therein.

Other Matters Coming Before the Meeting

As of the date of this proxy statement, the management does not know of any matters to be presented at the annual meeting, other than the election of directors and the proposed merger of Pere Marquette into Chesapeake. If any other matters come before the meeting, it is intended that the holders of the proxies will vote thereon in their discretion. The annual report to stockholders and the minutes of the last preceding annual meeting of stockholders will be presented to the meeting for the purpose of being received and filed, and, if necessary, in the case of the minutes of the last meeting of the stockholders, corrected, but the action taken is not to constitute approval or disapproval of any of the matters referred to in said report or minutes.

By order of the Board of Directors.

H. F. Lohmeyer, Secretary.

March 15, 1946.

[fol. 76] Exhibit A

Agreement of Merger made and entered into this 19th day of February, 1946, by and between The Chesapeake and Ohio Railway Company, a corporation organized and existing under the laws of the Commonwealth of Virginia (the corporation which will survive, hereinafter called "Chesapeake" or the "Corporation"), and Pere Marquette Railway Company, a corporation organized and existing under the laws of the State of Michigan (hereinafter called "Pere Marquette"), such corporations being hereinafter

sometimes called "the parties hereto," and also by and between the respective Boards of Directors of each of the parties hereto:

Recitals

Chesapeake is a corporation owning lines of railroad in the States of Virginia, West Virginia, Kentucky, Ohio, and Indiana, and conducting a general railroad and transportation business in those States as well as in the State of Illinois and in the District of Columbia. Its authorized capital stock consists of $300,000,000 of common stock divided into 12,000,000 shares of the par value of $25 each, and preference stock up to an aggregate par amount which shall not, at the time of issuance, exceed 40% of the sum of the aggregate par amount of the total capital stock of Chesapeake (including the preference stock so issued) at such time outstanding and its then existing corporate surplus. There are presently outstanding 7,657,354 shares of common stock, and scrip in the aggregate amount of $69.44. One share of common stock is held in the treasury. No shares of preference stock are presently outstanding.

Pere Marquette is a corporation owning lines of railroad situated in the States of Michigan, Ohio, and Indiana, and conducting a general railroad and transportation business in those States as well as in the States of Illinois and New York and in the Province of Ontario, Canada. Its authorized capital stock is $77,684,200 divided into 776,842 shares of the par value of $100 each, consisting of 112,000 shares of prior preference stock, 124,290 shares of preferred stock, and 540,552 shares of common stock. There are presently outstanding 111,999 shares of prior preference stock, 124,288 shares of preferred stock, and 450,448 shares of common stock and scrip certificates representing fractional interests in prior preference, preferred, and common stock in the respective face amounts of $24, $16, and $71.95. Of such outstanding stock, certain shares of each class represent the number of shares required to redeem outstanding voting trust scrip certificates issued in a prior reorganization and securities of a predecessor company. There are presently held in the treasury one share of preferred stock, 11 shares of common stock, and voting trust scrip certificates representing fractional interests in prior preference, preferred, and common stock in the respective face amounts of $76, $84, and $28.05.

Chesapeake owns 313,900 shares of common stock and 13,950 shares of preferred stock of Pere Marquette.

Chesapeake and Pere Marquette are both organized for the purpose of carrying on the same or similar business, and the railroads owned by them form continuous or connecting lines of railroad.

The boards of directors of Chesapeake and Pere Marquette, after careful study of the matter, have determined that a merger of Pere Marquette into Chesapeake will result in greater efficiency and economy of operation, management, and financing, and will be in the public interest,

Now, Therefore, in consideration of the premises and of the mutual agreements, covenants, and provisions herein contained and for the purpose of prescribing the terms and conditions of such merger and the mode of carrying the same into effect, the parties hereto and the boards of directors thereof have agreed and do hereby agree as follows:

[fol. 77] Article I

Pere Marquette shall be, and is hereby, merged into Chesapeake, which, from and after the Merger Date (as defined in Article VIII hereof) shall continue to have the name of The Chesapeake and Ohio Railway Company.

Article II

The corporate identity and existence, and all and singular the property, real and personal, and estates and interests therein, leases, leasehold interests, agreements, contracts, debts due on whatever account things in action, name, undertakings, rights, powers, franchises, privileges, and immunities of Chesapeake shall continue in Chesapeake unaffected and unimpaired by this Agreement. The corporate existence of Pere Marquette shall continue in Chesapeake in so far as provided by law, but otherwise shall cease upon the Merger Date, and thereupon Chesapeake and Pere Marquette shall become a single corporation, namely, Chesapeake, which shall continue as a corporation of the Commonwealth of Virginia. Upon the Merger Date, all and singular the property, real and personal, and estates and interests therein, leases, leasehold interests, agreements, contracts, debts due on whatever account, things in action, name, undertakings, rights, powers, franchises, privileges, and immunities, owned, held or occupied by, or belonging to,

Pere Marquette shall be automatically conveyed, transferred, and set over to and vested in Chesapeake without any act or deed, and shall be as effectually the property of Chesapeake as they were of Pere Marquette.

Effective upon the Merger Date, Chesapeake hereby assumes and shall be responsible for, and thereafter shall promptly and punctually perform, all obligations, liabilities, duties, covenants, and conditions of Pere Marquette. Chesapeake shall have the right to make any and all defenses against all claims and demands arising out of such obligations, liabilities, duties, covenants, and conditions that Pere Marquette might have been entitled to assert in the premises. Nothing herein is intended to extend or enlarge the liens of any indenture, agreement, or other instrument executed by Pere Marquette or Chesapeake.

Article III

Chesapeake, in addition to the powers conferred upon it by the laws of the Commonwealth of Virginia, shall have the powers set forth in or conferred by the charter of Chesapeake and the charter of Pere Marquette, the latter conferring generally the power to conduct a railroad and transportation business, and matters incidental thereto, in the State of Michigan and other states, on the Great Lakes, and in the Dominion of Canada. The charter of Chesapeake, as changed or amended from and after the Merger Date by this Agreement, shall be, and continue to be, the charter of Chesapeake.

The principal office of Chesapeake in the Commonwealth of Virginia shall continue to be located in the City of Richmond, but offices may from time to time be established in such other cities within or outside the Commonwealth of Virginia as the board of directors may determine.

Article IV

Until amended or repealed as therein provided, the by-laws of Chesapeake, as they shall exist on the Merger Date, except in so far as they may be inconsistent with this Agreement, shall continue to be the by-laws of Chesapeake.

Article V

The board of directors of Chesapeake, who shall hold office from and after the Merger Date until their successors are elected or appointed and qualified in accordance with the by-laws, shall consist of 14 persons, whose names and respective places of residence are as follows:

[fol. 78]

Directors

Name	Place of Residence
Leonard P. Ayres	2061 East 96th Street, Cleveland, Ohio
James G. Blaine	40 East 54th Street, New York, N. Y.
Robert J. Bowman	1013 Audubon Road, Grosse Pointe Park 30, Michigan
Cyrus S. Eaton	Acadia Farm, Northfield, Ohio
Howell B. Erminger, Jr.	199 East Lake Shore Drive, Chicago, Illinois
Herbert Fitzpatrick	Huntington, W. Va.
Harvey D. Gibson	52 East 69th Street, New York, N. Y.
Henry J. Guild	19 Commercial Street, Adams, Mass.
Allan P. Kirby	Spring Valley Road, Morristown, N. J.
William H. Lipscomb	Raspberry Plains Farm, Leesburg, Va.
Robert W. Purcell	87 Beach Road, Lakewood, Ohio
Harry C. Thompson	23 Studio Lane, Bronxville, N. Y.
Andrew Van Pelt	Woodstock, Radnor, Pa.
Robert R. Young	Newport, R. I.

If any person above named shall be unable or unwilling to serve as a member of the board of directors, or if during the interim between the date of this Agreement and the Merger Date he shall cease to be a director of either Chesapeake or Pere Marquette, the remaining persons above named shall elect a successor to fill his place by majority vote.

The number of members of the board of directors may be changed from time to time in accordance with the provisions of the by-laws, but not to a number less than seven.

The names and places of residence of the principal officers of Chesapeake, who shall, from and after the Merger Date, hold office at the pleasure of the board of directors, or until

their successors are elected or appointed and qualified in accordance with the by-laws, are as follows:

Principal Officers

Office	Name	Place of Residence
Chairman of the Board	Robert R. Young	Newport, R. I.
President	Robert J. Towman	1013 Audubon Road, Grosse Pointe Park 30, Mich.
Executive Vice-President	Arch T. Lowmaster	3209 Hawthorne Avenue, Richmond, Virginia
Senior Vice-President	Ross S. Marshall	20776 Brantley Road, Shaker Heights, Ohio
Vice-President	William C. Hull	13415 Shaker Boulevard, Cleveland, Ohio
Vice-President	Edward M. Thomas	2885 Carlton Road, Shaker Heights, Ohio
[fol. 79]		
Vice-President	Walter J. Tuohy	13415 Shaker Boulevard, Cleveland, Ohio
Vice-President	Harry P. Henshaw	330 Woodland Drive, Huntington, W. Va.
Vice-President	John B. Parrish	6303 Towana Road, Richmond, Virginia
Vice-President	William H. Wenneman	2555 Coventry Road, Shaker Heights, Ohio
Vice-President	Leonard B. Allen	10807 Lake Avenue, Cleveland, Ohio
Vice-President	Robert W. Purcell	87 Beach Road, Lakewood, Ohio
Secretary and Treasurer	Henry F. Lohmeyer	18003 Fernway Road, Shaker Heights, Ohio

If during the interim between the date of this Agreement and the Merger Date any officer above named shall no longer hold office in either Chesapeake or Pere Marquette, the directors in this Article named shall by majority vote designate a person to be substituted in his place and stead.

The several departmental officers of Chesapeake and Pere Marquette on the Merger Date shall be continued, subject to the provisions of the by-laws, as departmental officers of Chesapeake, with such changes in titles and duties as their officers superior in rank or the board of directors may determine.

Article VI

The maximum number of authorized shares of the capital stock of the Corporation shall be 12,650,000, divided into two classes, Preferred Stock and Common Stock.

The total number of shares of the Preferred Stock authorized shall be 650,000 shares of the par value of $100 each, which may be issued in series as hereinafter provided.

The total number of shares of the Common Stock authorized shall be 12,000,000 shares of the par value of $25 each. The minimum number of shares of stock of the Corporation shall be 10 shares of Common Stock.

The description of said classes of stock, and the designations, rights, preferences, and voting powers of such classes of stock, or restrictions or qualifications thereof (together with certain related provisions for the regulation of the business and for the conduct of the affairs of the Corporation) shall be as hereinafter in Divisions A, B, and C of this Article VI set forth.

Division A—Preferred Stock

1. *Issuance in Series.* The board of directors is hereby empowered to cause the Preferred Stock of the Corporation to be issued in series with such of the variations permitted by clauses (a)-(f), both inclusive, of this Section 1 as shall have been determined by the board of directors with respect to any series prior to the issue of any shares of such series, subject, however, to the provisions of Sections 2-8, both inclusive, of this Division A, which shall apply to all series of the Preferred Stock of the Corporation, and to the provisions of Sections 9-11 of this Division A, which shall apply to the series of 3½% Convertible Preferred Stock created hereby.

The shares of the Preferred Stock of different series may vary as to:

(a) The designation of such series;

(b) The rate at which dividends are payable on the shares of such series (hereinafter referred to as the "dividend rate") and the dividend payment dates of the shares of such series;

[fol. 80] (c) The price or prices payable in respect of the shares of such series in case of the redemption thereof (hereinafter referred to as the "redemption price");

(d) The amount payable in respect of the shares of such series in case of liquidation, dissolution, or winding up of the Corporation (hereinafter referred to as the "liquidation price"), and the amount payable, if any, in addition to the liquidation price for such series

in case such action be voluntary (hereinafter referred to as the "liquidation premium");

(e) The amount of the retirement or sinking fund, if any, providing for the purchase or redemption of the shares of such series, in addition to the Retirement Fund provided for in Section 6 of this Division A; and

(f) The right, if any, to convert the shares of such series into shares of any other class or classes of stock or of any other series of the same class, and the rate or basis, time, manner, and conditions of conversion or the method by which the same shall be determined.

The shares of all series of Preferred Stock shall be equal in all respects except as, consistently with this Section 1, shall have been otherwise determined by the board of directors prior to the issuance thereof. All shares of Preferred Stock of each series shall be equal in all respects. If and whenever from time to time the board of directors shall determine to issue Preferred Stock of any other series not then established, it shall, prior to the issue of any shares of each such new series, cause provisions respecting the same to be set forth in the stock certificates therefor and in such other certificates, if any, as shall at the time be required by law.

2. *Dividends.* The holders of the Preferred Stock of each series shall be entitled to receive, if and when declared payable by the board of directors, dividends at, but not exceeding, the dividend rate for such series, payable on such dates as shall be fixed for such series. Such dividends shall be cumulative (but dividends in arrears shall not bear interest), and no dividends shall be declared or paid upon or set apart for the Common Stock unless and until full dividends on the outstanding Preferred Stock shall have been paid, or declared and set apart for payment, with respect to all past dividend periods and the current dividend period. Dividends on all shares of the Preferred Stock of each series shall commence to accrue and be cumulative from the date of the initial issue of any shares of such series; but (a) all dividends declared payable to the holders of record of Preferred Stock of any series as of a date on which shares of Preferred Stock of such series are owned by the Corpora-

tion shall be deemed to have been paid in respect of such shares owned by the Corporation on such date, and (b) in the event of the issuance of additional shares of Preferred Stock of any series subsequent to the date of the initial issuance of shares of such series, all dividends declared payable to the holders of record of Preferred Stock of such series as of a date prior to such additional issuance shall be deemed to have been paid in respect of the additional shares so issued. Current dividends shall not be paid or set apart for payment on the Preferred Stock of any series unless and until full dividends for all past dividend periods on the outstanding Preferred Stock of all series shall have been paid, or declared and set apart for payment; and if a default shall exist in the payment of dividends on all series of Preferred Stock, no dividends shall be declared on the Preferred Stock of any series unless dividends are declared on the Preferred Stock of all series then outstanding, in proportion to the aggregate amounts of the deficiencies in payment of such full dividends for the respective series.

3. *Preference on Liquidation, etc.* In the event of any liquidation, dissolution, or winding up of the Corporation, the holders of the Preferred Stock of each series shall be entitled to receive, for each share thereof, the liquidation price for such series, plus, in case such liquidation, dissolution, or winding up shall be voluntary, the liquidation premium for such series, if any, together in all cases with a sum equal to all dividends accrued or in arrears thereon, before any distribution of the assets shall be made to holders of Common Stock; but the holders of the Preferred Stock shall be entitled to no further participation in such distribution. If, upon any such liquidation, dissolution, or winding up, the assets distributable among the holders of the Preferred Stock shall be insufficient to permit the payment of the full preferential amounts aforesaid, then such assets shall be distributed among the holders of the Preferred Stock then outstanding, ratably in proportion to the full [fol. 31] preferential amounts to which they are respectively entitled. The expression "dividends accrued or in arrears" means, for the purposes of this Section 3 and of Section 4 of this Division A, in respect of each share of the Preferred Stock of any series, that amount which shall be equal to simple interest upon the sum of one hundred dollars at an annual rate equal to the percentage that the divided rate for

such series is of one hundred dollars, from the date from which cumulative dividends thereon commence to accrue to the date as of which the computation is to be made, less the aggregate amount of all dividends theretofore paid or deemed to have been paid. Nothing in this Section 3 shall be deemed to prevent the purchase, acquisition, or other retirement by the Corporation of shares of its Common Stock, and no such purchase, acquisition, or other retirement of shares of its Common Stock shall be deemed to be a liquidation, dissolution, or winding up of the Corporation. A merger of the Corporation into any other corporation, or merger of any other corporation into the Corporation, or consolidation of the Corporation with any other corporation, or a sale or transfer of the property of the Corporation as or substantially as an entirety shall not be deemed to be a liquidation, dissolution, or winding up of the Corporation.

4. *Redemption.* The Corporation may, at its option expressed by resolution of its board of directors, at any time or from time to time, except as otherwise provided with regard to the 3½% Convertible Preferred Stock in Section 11 of this Division A, redeem the whole or any part of the Preferred Stock or of any series thereof, at the redemption price for such series, together with a sum equal to all dividends accrued or in arrears thereon as of the redemption date; provided, however, that the Corporation shall not redeem less than all of the Preferred Stock at any time when full dividends with respect to all past dividend periods on the outstanding Preferred Stock shall not have been paid, or declared and set apart for payment. Notice of any proposed redemption of Preferred Stock shall be given by publication at least once in one newspaper printed in the English language and customarily published on each business day and of general circulation in the Borough of Manhattan, The City of New York, at least thirty (30) days (or any greater number of days that may have been fixed for any particular series) prior to the date fixed for such redemption. Notice of any proposed redemption of Preferred Stock shall also be given by the Corporation by mailing a copy of such notice, at least thirty (30) days (or any greater number of days that may have been fixed for any particular series) prior to the date fixed for such redemption to the holders of record of the Preferred Stock to be redeemed, at their respective addresses then appearing on the books of

the Corporation; but neither failure to mail such copy nor any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of the Preferred Stock so to be redeemed. In case of the redemption of a part only of any series of the Preferred Stock at the time outstanding, the Corporation shall select by lot or pro rata, as the board of directors may determine, the shares so to be redeemed. In any such selection, any shares issuable with respect to scrip certificates which may be outstanding and any shares of stock which may be held in the treasury of the Corporation shall be disregarded.

On or at any time before the redemption date, the Corporation shall deposit in trust, for the account of the holders of the shares to be redeemed, funds necessary for such redemption with a bank or trust company in good standing, organized under the laws of the United States of America or of the State of New York, doing business in the Borough of Manhattan, The City of New York, and designated or to be designated in such notice of redemption. Upon completing the publication as hereinabove provided of the notice of such redemption, or upon the earlier delivery to said bank or trust company of irrevocable authorization and direction to begin promptly and complete such publication of notice, all shares with respect to the redemption of which such deposit shall have been made and such publication completed or authorization therefor given shall, whether or not the certificates therefor shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate, except only the right of the holders of the certificates for such shares to receive, out of the funds so deposited in trust, from and after the date of such deposit, the amount payable upon the redemption thereof, without interest; provided, however, that notwithstanding the above provision, any conversion right that may have been established for the shares of the Preferred Stock of any series shall continue to be exercisable in accordance with the provisions establishing it. If the Corporation shall satisfy such bank or trust company that any of the shares in respect of which such deposit was made have thereafter been converted into other stock, the Corporation shall be [fol. 82] entitled forthwith to receive the full amount deposited in respect of the shares so converted. At the expiration of five years after the redemeption date any such

monies then remaining on deposit with such bank or trust company shall be paid over to the Corporation, free of trust, and thereafter the holders of the certificates for such shares shall have no claims against such bank or trust company, but only claims as unsecured creditors against the Corporation for amounts equal to their pro rata shares of the monies so paid over without interest.

If, in connection with the accomplishment of any matter whatsoever, provision is to be made for the redemption of all of the Preferred Stock of any series at the time outstanding, then nothing in this Article VI shall be construed to confer on the holders of the Preferred Stock of such series, and they shall not have, any power or right to vote in respect of any such matter, except where, and to the extent that, a right to vote which can not be waived by the terms hereof is conferred by then existing laws of the Commonwealth of Virginia.

5. *Voting Rights.* Each holder of Preferred Stock shall be entitled to one vote for each share of such stock standing in his name on all matters lawfully coming before the shareholders of the Corporation, and the holders of Preferred Stock shall not be entitled to any separate class vote on any matter except as provided in Section 3 of Division C of this Article VI, or as required by law.

6. *Retirement Fund.* As and for a Retirement Fund for the purchase of Preferred Stock, the Corporation shall, within 30 days after the Merger Date, set aside the sum of $250,000, and, so long as accrued dividends on all shares of outstanding Preferred Stock shall have been paid for all past dividend periods, the Corporation shall on the first day of March in the year succeeding the first full calendar year after the Merger Date, and on the first day of March in each year thereafter, set aside an amount equal to 5% of the residuary earnings, as hereinafter defined, of the Corporation for the preceding calendar year, or an amount equal to the difference between the sum, if any, so set aside and held on such first day of March in said Retirement Fund and $1,000,000, whichever amount shall be less. Such fund shall be held and administered by the Corporation and shall be used, in whole or in part, on such occasions as the board of directors may in its sole discretion from time to time determine, for the purchase of shares of Preferred Stock of any series in the open market or at public or private sale at not

more than the redemption price thereof, plus the usual and customary brokerage commissions paid in connection with the purchase thereof.

For the purpose of calculation of payments (other than the initial payment as aforesaid) to the Retirement Fund, the residuary earnings of the Corporation for its preceding calendar year shall be deemed to be the net income after fixed charges for such year, less

(a) the amount of dividends payable during such year on outstanding Preferred Stock, and

(b) a Common Stock dividend allowance for such year (whether or not declared or paid) computed by multiplying the number of shares of the Common Stock outstanding as of the end of such year by $3.50 per share.

In the event that at any time or from time to time, the outstanding shares of the Common Stock shall be combined into a less number of shares, be subdivided into a greater number of shares, or be increased by a stock dividend, then the per share dividend allowance herein provided shall be subject to adjustment and shall, in the case of combination of shares, be the amount obtained by multiplying $3.50 by the number of shares combined into each new share of Common Stock, or, in the case of subdivision of shares, the amount obtained by dividing $3.50 by the number of shares issued in exchange for each share, or in the case of a stock dividend the amount obtained by dividing $3.50 by one share plus the share or shares or fraction of one share distributed as such dividend.

7. *Cancellation of Reacquired Shares.* All shares of Preferred Stock reacquired by the Corporation through redemption, purchase through any retirement or sinking fund, or conversion into Common Stock shall be cancelled, and shall be retired in accordance with Section 3781 of the Code of Virginia of 1919, as amended, but such cancellation and retirement shall not reduce the maximum authorized amount of the Preferred Stock.

[fol. 83] 8. *No Preemptive Rights.* The holders of Preferred Stock of the Corporation shall have no preemptive rights to purchase, or to have offered to them for purchase, any of the stock of any class or any other securities of the

Corporation which may be from time to time authorized, offered for sale, disposed of, or issued.

9. *3½% Convertible Preferred Stock.* The first series of Preferred Stock is hereby designated as "3½% Convertible Preferred Stock," of which 211,429.4 shares are to be issued in conversion of shares of stock of Pere Marquette Railway Company when the merger of that company into The Chesapeake and Ohio Railway Company shall become effective. The dividend rate on the shares of such series shall be $3.50 per share per annum, and the dividend payment dates shall be the first days of February, May, August, and November of each year. The liquidation price of the shares of such series shall be $100 per share, and the liquidation premium of such shares, $5 per share. All such shares shall have the conversion right provided in Section 10 of this Division A and shall be subject to redemption in accordance with the provisions of Section 4, except as otherwise provided in Section 11, of this Division A.

10. *Conversion Right of 3½% Convertible Preferred Stock.* Each share of 3½% Convertible Preferred Stock may, at the option of the holder thereof, be converted at any time into fully-paid and non-assessable shares of Common Stock of the Corporation at the conversion ratio in effect at the time of conversion, determined as hereinafter provided, upon surrender to the Corporation for such purpose of the certificate representing such stock; provided, however, that in respect of any stock called for redemption such conversion right shall expire at the close of business on the day preceding the redemption date. No adjustment shall be made on account of dividends accrued or in arrears on the 3½% Convertible Preferred Stock surrendered for conversion or for dividends on Common Stock issued upon such conversion. In the event that a holder of 3½% Convertible Preferred Stock, upon conversion as aforesaid, shall become entitled to receive a fractional interest in one share of Common Stock, the Corporation shall issue, in lieu of a fractional share certificate, a transferable non-dividend bearing, non-voting scrip certificate, in such form and expiring after such reasonable time as the board of directors may have prescribed before the issuance thereof, said scrip certificate to be exchangeable in amounts aggregating one or more full shares for a Common Stock

certificate representing such share or shares, together with a new scrip certificate of like tenor for any remaining fractional right.

Initially, the conversion ratio shall be 1.6 shares of Common Stock for each share of 3½% Convertible Preferred Stock (based upon a fixed conversion price of $100 per share for the 3½% Convertible Preferred Stock and an initial conversion price of $62.50 per share for the Common Stock), but if the happening of one or more of the events specified in the next succeeding paragraph hereof shall produce an adjusted conversion price of the Common Stock, a new conversion ratio, determinable by dividing $100 by such adjusted conversion price, shall be established provided such quotient shall result in an increase or decrease in the conversion ratio then in effect of 1/40th of a share, or any multiple thereof. Less fractions shall be disregarded unless and until their cumulative effect shall be to change the conversion ratio by 1/40th of a share.

In case the Corporation shall at any time, from time to time, subdivide the outstanding shares of Common Stock into a greater number of shares, the conversion price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the conversion price in effect immediately prior to such combination shall be proportionately increased. In case the Corporation shall at any time, or from time to time, issue any shares of Common Stock, other than those referred to in the next sentence hereinbelow, for a consideration per share less than the conversion price in effect immediately prior to the time of such issue, or without consideration, then the conversion price shall be adjusted to the price obtained by multiplying the number of shares of Common Stock outstanding immediately prior to such issue by the then existing conversion price, adding to the result so obtained the value of the consideration, if any, received by the Corporation upon such issue, and dividing the sum so obtained by the total number of shares of Common Stock outstanding immediately after such issue. There shall, however, be no adjustment of the conversion price because of any of the following issues of Common Stock: (a) shares issued or issuable in conversion of shares of Pere Marquette Rail-
[fol. 84] way Company; (b) shares issued upon conversion

of any Convertible Securities as defined in the next succeeding paragraph, or upon the exercise of any rights, warrants, or options; and (c) shares theretofore acquired by the Corporation and then held in its treasury. Common Stock issued as a stock dividend shall, for the purposes of this paragraph, be deemed to have been issued without consideration.

If and whenever the Corporation shall issue any Convertible Securities, as hereinbelow defined, or shall issue any rights, warrants, or options to purchase Common Stock or Convertible Securities, then such issue shall, for the purposes of the next preceding paragraph, be deemed to be the issue (as of the date of issue of such Convertible Securities, or of such rights, warrants, or options) of the total maximum number of shares of Common Stock necessary to permit the conversion or exchange of all such Convertible Securities, or the exercise of all such rights, warrants, or options; and the amount received or receivable by the Corporation as consideration for the issue of such Convertible Securities, or of such rights, warrants, or options, plus the minimum aggregate amount, if any, payable to the Corporation upon such conversion, exchange, or exercise, shall be deemed to be the consideration actually received (as of the date of issue of such Convertible Securities, or of such rights, warrants, or options) for such Common Stock, and the maximum number of shares of Common Stock required to be issued as aforesaid shall, for this purpose, be deemed to be outstanding thereafter; provided, however, that upon the expiration of such conversion or exchange privilege or of such rights, warrants, or options, if any thereof shall not have been exercised, (1) the number of shares of Common Stock deemed to have been issued and outstanding by reason of the fact that they were issuable upon the exercise of such conversion or exchange privilege or of such rights, warrants, or options, which were not so converted, exchanged, or exercised, shall no longer be deemed to be issued and outstanding; and (2) the conversion price shall forthwith be readjusted and thereafter be the price which it would have been had adjustment been made on the basis of the issue only of the shares of Common Stock actually issued upon the exercise of such conversion or exchange privilege or of such rights, warrants, or options. For the purposes of this paragraph, "Convertible Securities" shall mean any stock or securities convertible

into or exchangeable for shares of Common Stock; and the "date of issue" of any Convertible Securities or of any rights, warrants, or options, shall be deemed to be the record date fixed by the board of directors of the Corporation for the determination of Common stockholders entitled to purchase any such Convertible Securities or to purchase or receive any such rights, warrants, or options, or, if Common stockholders shall not be entitled to purchase such Convertible Securities, then the date when payment of the consideration therefor is received by the Corporation.

In case any shares of Common Stock or any Convertible Securities or any rights, warrants, or options to purchase any such stock or securities shall be issued for cash, the consideration received therefor shall be deemed to be the amount received or receivable by the Corporation, after deducting therefrom any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or any Convertible Securities or any rights, warrants, or options to purchase any such stock or securities shall be issued, in connection with a purchase of assets for securities or upon a merger of another corporation into the Corporation, for a consideration other than cash (or a consideration which includes cash, if such cash constitutes a part of the assets of a corporation or business substantially all of the assets of which are being received as such consideration), then the board of directors of the Corporation shall, solely for this purpose, determine the fair value of such consideration, and such Common Stock, Convertible Securities, rights, warrants, or options shall be deemed to have been issued for an amount of cash equal to the value so determined by the board of directors.

In case of any reclassification or other adjustment of the capital stock of the Corporation, each share of the 3½% Convertible Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such share of the 3½% Convertible Preferred Stock would have been entitled upon such reclassification or other adjustment; and, in any such case, appropriate adjustment (as determined by the board of directors) shall be made in the application of the provisions herein set forth, to the end that such rights shall thereafter continue to

be applicable, as nearly as reasonably may be, in rela-
[fol. 85] tion to any shares of stock thereafter deliverable upon the conversion of the shares of the 3½% Convertible Preferred Stock.

In the event of a consolidation of the Corporation with another corporation or corporations, or of a merger of the Corporation into another corporation, each share of 3½% Convertible Preferred Stock shall, at the option of the holder thereof, be exchangeable (1) for stock or securities of such consolidated corporation or of the corporation into which merger is effected at the ratio and upon the terms and conditions specified in the articles or agreement of consolidation or merger, or (2) for the amount of stock or securities of such consolidated corporation or of the corporation into which merger is effected as would, at the ratio and upon the terms and conditions specified in the articles or agreement of consolidation or merger, be given in exchange for the number of shares of Common Stock then issuable, in accordance with the conversion ratio in effect at that time, upon conversion of each share of 3½% Convertible Preferred Stock under the foregoing provisions.

Whenever the happening of any transaction or transactions results in an adjustment of the conversion ratio in accordance with the foregoing provisions of this Article VI, the Corporation shall cause notice of such adjustment to be mailed to the holders of record of the 3½% Convertible Preferred Stock and to the stock transfer agents of said stock and of the Common Stock.

In case (a) the Corporation shall pay any dividend or make any distribution upon its Common Stock payable otherwise than in cash, or (b) the Corporation shall offer to the Common stockholders subscription rights for any additional shares of stock of any class, or any other rights, warrants, or options, or (c) any reclassification or adjustment shall be made of the capital stock of the Corporation, or (d) a voluntary or involuntary dissolution or liquidation of the Corporation shall occur; then, and in any such case, the Corporation shall cause to be mailed to the holders of record of the 3½% Convertible Preferred Stock and to the transfer agent of said stock, a notice of at least 10 days stating the date on which (1) a record is to be taken for the purpose of such dividend, distribution, or offering of rights, warrants, or options, or (2) such reclassification or

adjustment of capital stock, or such dissolution or liquidation is to take place, and the date, if any is to be fixed, as of which holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for stock, securities, or other property deliverable upon such reclassification or adjustment of capital stock or such dissolution or liquidation.

The Corporation shall initially reserve 338,287.04 shares of Common Stock to permit the conversion into Common Stock of the 211,429.4 shares of 3½% Convertible Preferred Stock to be issued in conversion of shares of stock of Pere Marquette Railway Company. Whenever, by reason of the foregoing provisions, the number of shares of Common Stock issuable upon conversion of each share of 3½% Convertible Preferred Stock shall be increased, the Corporation shall forthwith reserve a sufficient number of additional shares of Common Stock to provide for such increase, and the Corporation shall promptly obtain any necessary authorization of the Interstate Commerce Commission, and of any other regulatory body having jurisdiction over the issuance of securities of the Corporation, for the issuance of a sufficient number of shares of Common Stock to satisfy the conversion requirements of the 3½% Convertible Preferred Stock then outstanding.

The term "Common Stock" as used in connection with the provisions hereof for the adjustment of the conversion price shall include any shares of the Corporation now or hereafter authorized the right of which to dividends or assets is without limit as to any fixed amount or percentage; but the shares of Common Stock to be issued upon conversion of the 3½% Convertible Preferred stock shall include only shares of the class designated as Common Stock of the Corporation in this Agreement, or shares of any class or classes issued in substitution for such Common Stock upon any reclassification thereof.

If any certificate or certificates of Common Stock of the Corporation issuable upon conversion as aforesaid are to be issued in a name other than that appearing upon the certificate or certificates of 3½% Convertible Preferred Stock surrendered for exchange as hereinbefore provided, it shall be a condition of such conversion that the certificate or certificates so surrendered shall be properly endorsed for transfer and that the person presenting such stock for conversion shall pay to the Corporation or its transfer

[fol. 86] agent, any transfer or other taxes required by reason thereof, or establish to the satisfaction of the Corporation, or its transfer agent, that such taxes have been paid or are not payable.

A share of 3½% Convertible Preferred Stock shall be deemed to have been converted and the person in whose name the Common Stock is issued shall be deemed to have become a holder of record of Common Stock for the purpose of receiving dividends and for all other purposes whatsoever as of the date when the certificate for such Preferred Stock is surrendered to the Corporation as aforesaid, or if the books for the transfer of either class of stock shall at the time be closed, then, as of the next date when the books for the transfer of both classes of stock shall be opened; provided, however, that the right of conversion shall not in any case be suspended by closing said transfer books for a period longer than 30 days, nor at any time during the period of 30 days immediately preceding any date fixed for the redemption of 3½% Convertible Preferred Stock.

11. *Redemption Provisions of 3½% Convertible Preferred Stock.* The provisions of Section 4 of this Division A applicable to the redemption of Preferred Stock shall apply to the redemption of the 3½% Convertible Preferred Stock except as otherwise provided in this Section 11.

The redemption price of the shares of 3½% Convertible Preferred Stock shall be $105 per share. The redemption date of the Preferred Stock shall not be earlier than November 1, 1950, and thereafter shall be only a dividend payment date, but a call for redemption may be issued at any time prior to November 1, 1950.

If, upon issuing a call for redemption of all of the outstanding shares of the 3½% Convertible Preferred Stock, the Corporation shall deposit in trust with a bank or trust company the funds necessary for such redemption in accordance with the provisions of Section 4 of this Division A, and if the Corporation shall at the same time deposit in trust with such depositary, under an agreement of trust conforming to the provisions of this Section 11, such number of shares of its Common Stock as may be required at the conversion ratio then existing, to permit conversion of all such Preferred Stock into Common Stock, then all rights in this Agreement conferred upon the holders of such Preferred Stock shall cease and terminate, and each holder of

shares of such Preferred Stock shall thereafter have a beneficial interest in the trust proportionate to his Preferred Stock holding.

The depositary shall issue to each holder of shares of such Preferred Stock, upon surrender to it of the certificate therefor, a certificate representing shares of beneficial interest in the trust equal to the number of shares represented by the stock certificate so surrendered. Each share of beneficial interest shall entitle the holder thereof to the rights hereinafter provided.

Any holder of shares of beneficial interest shall at any time be entitled, upon surrender of the certificate therefor to such depositary for redemption, to receive out of the trust funds held by the depositary an amount equal to the sum theretofore deposited by the Corporation for and in respect of the shares so to be redeemed, less the aggregate amount of any and all sums theretofore disbursed with respect to said shares pursuant to the provisions hereinafter set forth. The depositary, upon making any such payment, shall release and transfer to the Corporation, out of the shares held by it in trust, the number of full shares of the Common Stock of the Corporation to which the holder of such certificate would have been entitled upon conversion thereof into Common Stock in accordance with the provisions of the next succeeding paragraph.

In lieu of surrendering his certificate for redemption, any holder of shares of beneficial interest may at any time surrender his certificate therefor to the depositary for conversion into Common Stock, and thereupon such certificate holder shall be entitled to receive from the depositary such number of full shares of the Common Stock of the Corporation held in trust (together with a scrip certificate for any fractional share) as he would then have been entitled to receive from the Corporation as a Preferred stockholder. The depositary, upon receiving for conversion any shares of beneficial interest, shall repay to the Corporation, out of the funds held by it in trust, an amount equal to the sum theretofore deposited by the Corporation for and in respect of the shares of beneficial interest so converted, less the aggregate amount of any and all sums therefore disbursed with respect to said shares pursuant to the next succeeding paragraph.

[fol. 87] Until each holder of any shares of beneficial interest shall have surrendered for redemption his certifi-

cate therefor or shall have exercised his conversion right as aforesaid (but in no event after the redemption date), the depositary, on the first days of February, May, August, and November of each year, shall distribute to such certificate holder, out of the funds held by it in trust, the sum of 87½¢ for and in respect of each share of beneficial interest then held by such certificate holder, according to the records of the depositary; but any sum so distributed shall be credited upon the amount distributable for and in respect of such share upon the redemption thereof.

If, prior to the redemption date, any change shall occur in the conversion ratio in accordance with the provisions of Section 10 of this Division A, the Corporation either shall deposit additional shares of Common Stock or shall be entitled to withdraw shares thereof previously deposited, to the end that there shall be held by the depositary at all times a number of shares of Common Stock sufficient for the conversion of all then outstanding shares of beneficial interest at the conversion ratio then in effect. Upon the redemption date, the depositary shall release and transfer to the Corporation all shares of Common Stock then held by it hereunder.

The certificates of beneficial interest shall be in such form as shall be determined by the depositary, with the approval of the Corporation, consistently with the provisions hereof, and shall be transferable on the books of the depositary. Upon and after the establishment of the trust, the certificates of 3½% Convertible Preferred Stock, until so exchanged, shall be deemed to be and shall be certificates of beneficial interest in the trust. The depositary shall be authorized to make and enforce any and all reasonable regulations, not inconsistent herewith, governing the issue and manner of exchange of such certificates of beneficial interest, as it in its discretion may deem advisable, and it shall maintain such books of registry and account and other records as shall be necessary to enable it to perform its duties hereunder.

All shares of Common Stock issued to the depositary and reacquired by the Corporation because of non-exercise of the conversion privilege hereinbefore set forth shall be cancelled, and shall be retired in accordance with Section 3781 of the Code of Virginia of 1919, as amended, but such cancellation and retirement shall not reduce the maximum authorized amount of the Common Stock.

Division B—Common Stock

1. *Dividends.* Dividends may be declared upon the Common Stock only after all dividends upon shares of Preferred Stock for the current and all past dividend periods shall have been paid, or shall have been declared and a sum sufficient for the payment thereof set apart, and only if the Corporation shall have set aside all amounts required to be set aside for the Retirement Fund as hereinbefore in this Article VI provided.

2. *Liquidation.* In the event of any liquidation or dissolution of the Corporation, whether voluntary or involuntary, the holders of Common Stock shall be entitled, to the exclusion of the holders of Preferred Stock, to share ratably in the assets of the Corporation remaining after payment of all amounts payable to the holders of Preferred Stock in accordance with their rights and privileges.

3. *Voting Rights.* Each holder of Common Stock shall be entitled to one vote for each share of said stock standing in his name on all matters lawfully coming before the shareholders of the Corporation.

4. *Preemptive Rights.* The holders of Common Stock shall have preemptive rights to purchase shares of any class of stock of the Corporation which at any time may be issued for a cash consideration, whether such stock shall be part of that authorized by this Agreement or shall be stock hereafter authorized, as well as any securities of the Corporation issued for a cash consideration which may be convertible into any of its stock or which may be issued with stock purchase warrants attached; provided, however, that there shall be no such preemptive rights to purchase any shares acquired by the Corporation as a result of, or upon a dissent from, the merger, or any other shares at any time acquired or reacquired by the Corporation and held in its treasury; and provided further that the preemptive rights of the Common stockholders shall only permit each such stockholder to purchase his proportionate share of such stock or securities, within such period as may be fixed by the board of directors of the Corporation, at such price and upon such [fol. 88] terms as may be fixed for the sale of such stock or securities by the board of directors; and provided further that, notwithstanding any of the foregoing provisions, no such preemptive rights shall exist in any holder of Common

Stock in any case where such rights shall have been waived by the affirmative vote of the holders of at least two-thirds of all of the shares of Common Stock then outstanding.

Division C—General Provisions

1. *Issuance and Sale of Shares.* Subject to the foregoing provisions of this Article VI, the board of directors of the Corporation in its discretion and without further approval or other action by the stockholders, but subject to all requisite authorization of public authorities, shall have power to cause the Corporation to issue and dispose of any and all shares of Preferred Stock and Common Stock of the Corporation at the time authorized but not herein provided to be issued in the merger of Pere Marquette Railway Company into the Corporation, and to create, issue, and dispose of any rights or options in respect of all or any part of such shares, to such persons, at such time or times, and for such considerations as may be fixed by the board of directors.

2. *Purchase of Shares.* So long as the Corporation shall have set aside all amounts required for the Retirement Fund provided for in Section 6 of Division A of this Article VI, the board of directors of the Corporation shall have the power, in its discretion and without action by the stockholders, to cause the Corporation to purchase any of the shares of its capital stock of any class at such price or prices (but, in the case of the Preferred Stock, at not exceeding the redemption price, plus the usual and customary brokerage commissions paid in connection with the purchase thereof) as the board may deem advisable or desirable (but in an aggregate amount not exceeding the surplus at the time of purchase), and to cancel such shares, or to hold them as treasury stock, or to resell them for such consideration as shall be approved from time to time by the board and authorized by the Interstate Commerce Commission; provided, however, that the Corporation shall not at any time purchase or otherwise acquire for a consideration, less than the whole of its then outstanding Preferred Stock, or purchase or otherwise acquire for a consideration any shares of its Common Stock, while dividends on the Preferred Stock for a period of one or more calendar years shall neither have been paid nor declared and set apart for payment; and further provided that monies in the Retirement Fund provided for in Section 6 of Division A of this

Article VI may be applied at any time to the purchase of Preferred Stock.

3. *Changes in Authorized Capital Stock and Other Amendments.* The number of authorized shares of capital stock of the Corporation of any class, or the amount of capital represented thereby, may be increased or decreased, one or more new classes of shares may be created, or the charter of the Corporation may be amended in any other way whatever without limitation; but any such action shall be effected in the manner and subject to the conditions and limitations prescribed by the laws of the Commonwealth of Virginia. It is, however, hereby expressly agreed, notwithstanding anything elsewhere in this Agreement contained, that, so long as any shares of the Preferred Stock shall be outstanding, the Corporation shall not authorize any shares of the Preferred Stock in addition to the 650,000 shares authorized by this Agreement except upon the written consent, or the affirmative vote at a meeting, of the holders of two-thirds of the total number of shares of Preferred Stock then outstanding; but upon such vote or consent, and any requisite vote or consent of the holders of the shares of Common Stock then outstanding, the Corporation shall be entitled at any time, or from time to time, to authorize such additional shares, or increase the maximum number of authorized shares, of the Preferred Stock, without limit in aggregate amount. . .

Article VII

The amount of the capital stock which Chesapeake shall issue in connection with the merger shall be $28,949,745, consisting of 211,429.4 shares of 3½% Convertible Preferred Stock and 312,272.2 shares of Common Stock. All such stock shall be issued in conversion of the outstanding capital stock of Pere Marquette, including shares of such stock owned by Chesapeake but excluding shares held in the treasury of Pere Marquette, and shall be deemed to have been issued as of the Merger Date. All such shares shall be fully-paid and non-assessable.

[fol. 89] Upon the Merger Date, the amount of the outstanding capital stock of Chesapeake shall be $220,383,595, consisting of the aforesaid 211,429.4 shares of 3½% Convertible Preferred Stock and 7,969,626.2 shares of Common Stock.

The manner of converting the outstanding shares of capi-

tal stock of Pere Marquette, and the distribution of the shares of the capital stock of Chesapeake to be issued in conversion of such capital stock of Pere Marquette shall be as follows:

Each of such shares of the 5% Cumulative Prior Preference Stock of Pere Marquette (including all accrued and unpaid dividends thereon as of the Merger Date) shall be converted on the Merger Date into one share of Preferred Stock and ⅓ of one share of Common Stock of Chesapeake.

Each of such shares of the 5% Cumulative Preferred Stock of Pere Marquette (including all accrued and unpaid dividends thereon as of the Merger Date) shall be converted on the Merger Date into 8/10 of one share of Preferred Stock and 4/10 of one share of Common Stock of Chesapeake.

Each of such shares of common stock of Pere Marquette shall, on the Merger Date, be converted into ½ of one share of Common Stock of Chesapeake.

All shares of the capital stock of Chesapeake issuable in conversion of shares of Pere Marquette held by Chesapeake on the Merger Date shall thereafter be held by Chesapeake in its treasury, and may be sold by Chesapeake, as fully-paid and non-assessable shares, subject to all requisite authorizations of the Interstate Commerce Commission and of any other regulatory body having jurisdiction over the issuance of securities of Chesapeake, to such persons, at such time or times, and for such considerations, as may be fixed by the board of directors.

Each share of Common Stock of Chesapeake outstanding on the Merger Date, including each share of such stock held by Chesapeake in its treasury, shall continue to be a share of Common Stock of Chesapeake, and the presently issued certificates for such stock shall continue to be valid certificates therefor, but the holders thereof shall be entitled to receive, in lieu of their present certificates, upon surrender thereof, new certificates bearing on their reverse the provisions of Article VI hereof.

Upon and after the Merger Date, each holder of a certificate or certificates of stock of Pere Marquette, upon surrender of such certificate or certificates for cancellation to an agent to be designated for the purpose by Chesapeake and Pere Marquette prior to the Merger Date, shall be entitled to receive a certificate or certificates, in definitive or temporary form, for the number of full shares of the

class or classes of stock of Chesapeake to which such stockholder shall be entitled pursuant to the foregoing provisions of this Article VII, and for any fractional rights resulting from such exchange as hereinafter provided. If certificates are originally issued in temporary form, such certificates, shall be exchangeable for definite certificates, without cost to the stockholders, as soon as they shall have been prepared.

Fractional rights to stock of Chesapeake resulting from the conversion of shares of Pere Marquette into shares of Chesapeake shall be provided for in the following manner:

For a period of three years next following the Merger Date, scrip certificates in bearer form shall be issued for such fractional rights. At any time within such three-year period, the Corporation, upon surrender to it of such scrip certificates in amounts representing in the aggregate one or more full shares of stock of the same class, shall issue a certificate or certificates for such number of full shares of such class of stock, together with a new scrip certificate for any remaining fractional right. The right to exchange scrip certificates for certificates representing full shares, as aforesaid, shall expire at the end of such three-year period. Scrip certificates shall not entitle the holder thereof to any of the rights, powers, or privileges of a stockholder of the Corporation, and the holder thereof shall have only such rights and privileges as are expressly provided for herein. The board of directors of the Corporation is authorized to make and enforce any and all reasonable regulations, not inconsistent herewith, governing the issue and manner of exchange of scrip certificates hereunder, as it in its discretion may deem advisable, including the appointment of an agent or agents for the purpose of exchanging stock certifi- [fol. 90] cates for scrip certificates and for the purpose of paying to bearers of scrip certificates the cash proceeds of the sales of stock as hereinafter provided.

As soon as may be practicable after the expiration of three years next following the Merger Date, the Corporation shall cause to be sold for cash, at public or private sale, at the then prevailing market prices, the aggregate number of shares of each class of stock deliverable upon the surrender of all script certificates outstanding at the end of such three-year period, together with an additional number of shares of each class of stock equal to the aggregate of the fractional rights in stock of such class which would re-

sult from the exchange of all certificates of stock of Pere Marquette not surrendered for exchange during such three-year period as hereinbefore provided. To the sum of money realized from the sale of all such shares of each class of stock, there shall be added the amount of all dividends declared and payable on said shares between the Merger Date and the date of such sale, and the aggregate sum of money applicable to each class of stock shall be held by the Corporation, or an agent to be appointed by it, as a fund for the benefit of holders of scrip certificates for, and of fractional rights to, the shares of such class. Thereafter, each holder of a scrip certificate for, or of a fractional right to, the shares of either class of stock, upon surrender of the scrip certificate, or of a certificate of stock evidencing such fractional right, shall be entitled to receive his pro rata share of the fund applicable to such class of stock, without interest, and he shall have no other or further rights in respect of said scrip certificate or of such fractional share right.

If the Corporation shall make payment to any stockholder for or in respect of any shares of stock of either of the parties hereto, whether pursuant to adjudication, compromise, purchase, or otherwise, or if the Corporation at any time shall be subject to liability to any stockholder who shall have dissented from the merger and such stockholder by reason of his dissent shall have forfeited his right to receive or to retain the shares in respect of which he shall have dissented, then, in each such case, the shares of the Corporation which such stockholder would have been entitled to receive or retain had he assented to the merger, or a number of shares equal thereto, may be sold by the Corporation as fully-paid and non-assessable shares, subject to all requisite authorization of the Interstate Commerce Commission and of any other regulatory body having jurisdiction over the issuance of securities of the Corporation, to such persons, at such time or times, and for such considerations, as may be fixed by the board of directors. If any shares are issued and sold hereunder before any such dissenting stockholder shall have surrendered to the Corporation his certificate for shares in respect of which he shall have dissented, the shares represented by such certificate, upon surrender thereof, shall be cancelled, but such cancellation shall not reduce the maximum authorized amount of the capital stock.

If any certificate or certificates of the stock of the Corporation are to be issued in a name other than that appearing upon the certificate or certificates of stock of Pere Marquette surrendered for exchange as hereinbefore provided, it shall be a condition of such issuance that the certificate or certificates so surrendered shall be properly endorsed for transfer and that the person requesting such exchange shall pay to the Corporation, or its transfer agent, any transfer or other taxes required by reason thereof, or establish to the satisfaction of the Corporation, or its transfer agent, that such taxes have been paid or are not payable.

From and after the date on which certificates for shares of stock of the Corporation shall have been made available for exchange in accordance with the foregoing provisions of this Article VII, the holders of shares of stock of Pere Marquette shall not be entitled to vote at any meeting of stockholders of the Corporation and shall not be entitled to receive any dividends unless and until they shall have actually exchanged their certificates of stock for temporary or definitive certificates of stock of the Corporation issuable in respect thereof, as herein provided, dividends theretofore declared then being payable. But the Corporation shall at all times from and after the Merger Date be entitled to treat the outstanding certificates for stock of Pere Marquette as evidencing respectively the ownership of the number of shares of stock of the Corporation into which such outstanding stock of Pere Marquette shall have been converted, notwithstanding the failure of any stockholders of Pere Marquette to exchange their certificates for certificates of stock of the Corporation in accordance with the foregoing provisions of this Article VII. After the Merger Date, there shall be no further issue or transfer of certificates of stock of Pere Marquette, and as such certificates are presented to the Corporation, they shall be cancelled and certifi- [fol. 91] cates of stock of the Corporation shall be issued in exchange therefor in accordance with the terms and conditions hereinbefore set forth.

No shares of stock of the Corporation shall be issued in exchange for shares of Pere Marquette owned by Pere Marquette and held in its treasury. On the Merger Date, all such shares shall be cancelled and retired.

Article VIII

This Agreement shall be submitted to the stockholders of each of the parties hereto at meetings separately held, and shall be subject to approval or sanction by the vote required by law of the stockholders of each of the parties hereto. This Agreement and the merger herein provided for shall also be submitted to the Interstate Commerce Commission and shall be subject to its approval and authorization.

This Agreement shall not become effective unless and until the holders of (a) at least 98% of the outstanding Prior Preference Stock of Pere Marquette, and at least 98% of its outstanding Preferred Stock and Common Stock held by others than Chesapeake, and (b) at least 98% of the outstanding Common Stock of Chesapeake shall vote for this Agreement and the merger provided for herein at the respective meetings of stockholders called for the purpose of considering this Agreement and said merger or at any adjournment or adjournments thereof, or shall otherwise irrevocably assent thereto; provided, however, that if upon any such meeting of the stockholders, such votes and assents shall be less than the required percentages specified above but shall be sufficient to satisfy the statutory requirements of the States of Virginia and Michigan, and if the board of directors of each of the parties hereto shall determine that it is practicable and desirable and in the interest of such party to consummate the merger with the votes and assents then obtained, such determination shall be certified in the certificates accompanying this Agreement, and this Agreement and said certificates shall thereupon be filed in the proper public office of the State of Michigan and with the State Corporation Commission of Virginia. But if, in the absence of the 98% vote or assent above specified, the board of directors of either of the parties hereto shall be of the opinion that the merger is, in all the circumstances, including the dissents impracticable or undesirable, it shall give notice of such determination to the other party hereto, and thereupon this Agreement shall terminate and be of no effect and there shall be no liability on the part of either of the parties hereto or its board of directors or stockholders.

This Agreement having received all requisite corporate authorization as above provided, and the merger herein provided for having been approved or authorized by the Inter-

state Commerce Commission, and an executed counterpart of this Agreement, duly certified by the appropriate corporate officers as provided by law, having been filed in the proper public office of the State of Michigan, the merger herein provided for shall become and be effective on the date (herein usually called the "Merger Date") when an executed counterpart of this Agreement duly certified as having been adopted or sanctioned by the stockholders shall, by order of the State Corporation Commission of Virginia, be admitted to record in its office.

On or before the Merger Date, Chesapeake shall take all steps necessary to qualify it to do business in the State of Michigan and in all other jurisdictions in which Pere Marquette is qualified to do business.

Article IX

If any stockholder who shall not have voted for the merger herein provided for or otherwise assented thereto shall desire to dissent therefrom, he may (and if so provided at the time by the law of the Commonwealth of Virginia, he shall) serve notice of such dissent on the president, secretary, or treasurer, either within or without the Commonwealth of Virginia, or his corporation, or on the statutory agent thereof, at any time within three months after the date of the meeting of the stockholders of his corporation to act on this Agreement of Merger, without awaiting the consummation of the merger.

This Agreement of Merger may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

[fol. 92] In Witness Whereof, the Boards of Directors of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Company, by all or a majority of their respective members, have executed this Agreement under the corporate seals of said corporations, and said corporations have caused this Agreement to be executed in their respective corporate names by their respective Presidents and the respective corporate seals hereunto affixed to be attested by their respective Secretaries, all as of the day and year first above written.

The Board of Directors of The Chesapeake and Ohio Railway Company. By Leonard P. Ayres, Andrew Van Pelt,

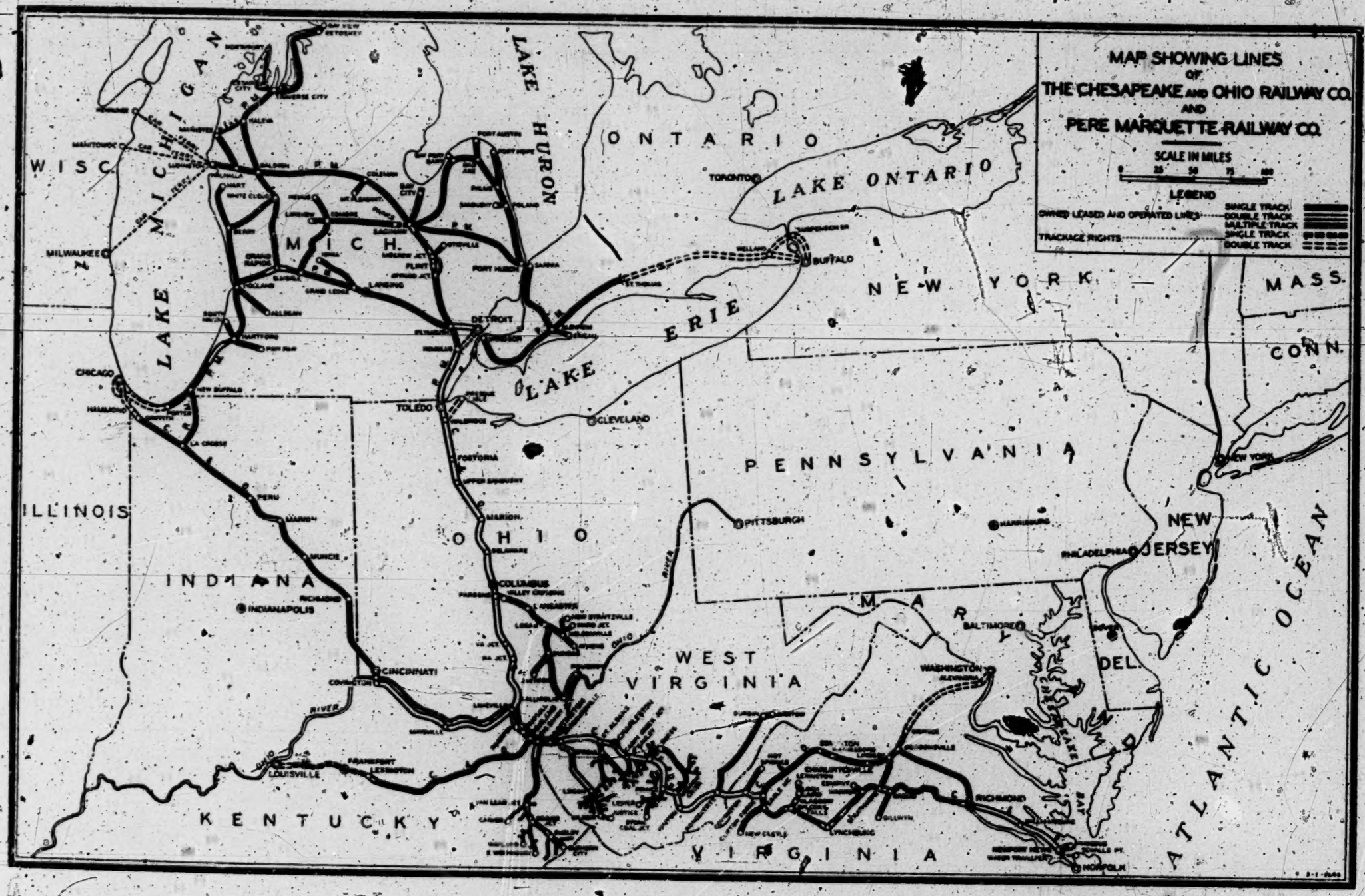
Harry C. Thompson, Henry J. Guild, Wm. H. Lipscomb, H. B. Erminger, Jr., Herbert Fitzpatrick, Carl E. Newton, C. S. Eaton, Harvey D. Gibson, Robert R. Young, Allan P. Kirby, James G. Blaine. Being all or a majority of their number.

The Chesapeake and Ohio Railway Company. By Carl E. Newton, *President*. Attest: H. F. Lohmeyer, *Secretary*. (Corporate Seal)

The Board of Directors of Pere Marquette Railway Company. By R. J. Bowman, J. J. O'Laughlin, Wilbur C. Manning, H. Dudley Swim, John L. Giles, Robert J. Bulkley, R. S. Marshall, H. B. Erminger, Jr., John E. Dwyer, James D. Miller, James E. Davidson, Walter S. McLucas. Being all or a majority of their number.

Pere Marquette Railway Company. By R. J. Bowman, *President*. Attest: H. F. Lohmeyer, *Secretary*. (Corporate Seal)

(Here follows 1 Photolithograph, side folio 93)


MAP SHOWING LINES
OF
THE CHESAPEAKE AND OHIO RAILWAY CO.
AND
PERE MARQUETTE RAILWAY CO.
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LEGEND
OWNED LEASED AND OPERATED LINES
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MICH.
ONTARIO
LAKE HURON
LAKE MICHIGAN
LAKE ONTARIO
LAKE ERIE
NEW YORK
MASS.
CONN.
PENNSYLVANIA
NEW JERSEY
ILLINOIS
INDIANA
OHIO
WEST VIRGINIA
KENTUCKY
VIRGINIA
MD.
DEL.
ATLANTIC OCEAN
CHESAPEAKE BAY
MILWAUKEE
CHICAGO
DETROIT
TOLEDO
CLEVELAND
BUFFALO
TORONTO
PITTSBURGH
HARRISBURG
PHILADELPHIA
NEW YORK
BALTIMORE
WASHINGTON
INDIANAPOLIS
CINCINNATI
COLUMBUS
LOUISVILLE
RICHMOND
NORFOLK
LA CROSSE
PERU
MARION
MUNCIE
RICHMOND
FRANKFORT
LEXINGTON
PORTSMOUTH
CHARLOTTESVILLE
LYNCHBURG
OHIO RIVER

[fol. 94] EXHIBIT C-1

The Chesapeake and Ohio Railway Company

General Balance Sheet—as of December 31, 1945

Assets

Investments:		
Road and equipment property		$652,990,812
Improvements on leased property		277,848
Acquisition adjustment		323,417*
Donations and grants		2,862,140*
Investment in transportation property		650,083,103
Accrued depreciation—Road		6,742,884*
Accrued depreciation—Equipment		135,470,199*
Accrued amortization of defense projects—Road		6,053,493*
Accrued amortization of defense projects—Equipment		57,897,562*
Investment in transportation property less recorded depreciation and amortization		443,918,965
Sinking funds		238,116
Capital and other reserve funds		2,171,485
Miscellaneous physical property		8,094,132
Accrued depreciation—Miscellaneous physical property		1,456,798*
Miscellaneous physical property less recorded depreciation		6,637,334
Investments in affiliated companies		
Stocks		45,885,948
Bonds		2,150,000
All other		13,108,712
Other investments		
Stocks		18,827,338
Bonds		449,000
All other		144,958
		533,581,776

* Denotes reverse item.

EXHIBIT C-1—Continued

Less—Held by or for Company at date —Bonds (See contra)	265,000
	533,316,776
Less—Reserve for adjustment of investment in securities	2,686,901*
Total investments	530,629,875
Reserve for adjustment of investment in securities	2,686,901*
Total investments	530,894,875
Current Assets:	
Cash	26,008,221
Temporary cash investments	12,300,000
Special deposits	13,277,772
Loans and bills receivable	79,050
Net balance receivable from agents and conductors	1,622,719
Miscellaneous accounts receivable	7,140,420
Material and supplies	10,013,340
Interest and dividends receivable	192,656
Accrued accounts receivable	11,881,286
Other current assets	115,329
Total current assets	82,630,793
Deferred Assets:	
Working fund advances	34,910
Other deferred assets	802,398
Total deferred assets	837,308
Unadjusted Debits:	
Prepayments	60,151
Discount on funded debt	42,161
Other unadjusted debits	839,664
Securities issued or assumed—Unpledged:	
Stock (See contra)	25
Bonds (See contra)	395,000

* Denotes reverse item.

EXHIBIT C-1—Continued

Securities issued or assumed—Pledged:	
Bonds (See contra)	30,000,000
	31,337,001
Less—Held by or for Company at date (See contra)	30,395,025
Total unadjusted debits	941,976
Grand Total	$615,039,952

[fol. 95]

The Chesapeake and Ohio Railway Company

General Balance Sheet—as of December 31, 1945

Liabilities

Stock:	
Capital stock	$191,433,944
Less—Held by or for Company at date (See contra)	25
Total Stock outstanding with Public	191,433,919
Premiums and assessments on capital stock	2,301,093
Total stock	193,735,012
Long Term Debt:	
Funded debt unmatured	194,768,000
Equipment obligations	40,873,000
	235,641,000
Less—Held by or for Company at date (See contra)	30,660,000
Total long term debt outstanding	204,981,000
Current Liabilities:	
Traffic and car-service balances—Cr.	1,768,268
Audited accounts and wages payable	10,720,291
Miscellaneous accounts payable	2,948,177

EXHIBIT C-1—Continued

Interest matured unpaid	683,027
Dividends matured unpaid	5,880,532
Unmatured interest accrued	1,816,159
Accrued accounts payable	2,091,475
Taxes accrued	13,243,489
Other current liabilities	583,402
Total current liabilities	44,734,820
Deferred Liabilities:	
Other deferred liabilities	1,550,368
Total deferred liabilities	1,550,368
Unadjusted Credits:	
Premium on funded debt	21,876
Other unadjusted credits	5,372,737
Accrued depreciation—Leased property	35,841
Total unadjusted credits	5,430,454
Surplus:	
Unearned surplus	281,135
Earned surplus—Appropriated	16,408,664
Earned surplus—Unappropriated	147,918,499
Total surplus	164,608,298
Grand Total	$615,039,952

[fol. 96] EXHIBIT C-1

The Chesapeake and Ohio Railway Company

Notes to General Balance Sheet as of December 31, 1945

Note:

Capital and Other Reserve Funds:

Amount on deposit with Trustees under various Equipment Trusts for equipment sold or destroyed	$ 135,978
Amount on deposit with Trustees of various mortgages covering property sold	737,201
Proceeds from sale of Equipment Trusts	1,298,226
	$ 2,171,405

Note:

Special Deposits:

Reserve for contingent tax liability	$ 4,700,000
For payment of dividends	5,880,532
Amount of taxes collected account of Governmental Agencies	1,588,184
For payment of principal, premium and interest on bonds, equipment trusts, etc.	1,109,056
	$ 13,277,772

Note:

Accrued Accounts Receivable:

Tax refund due from U. S. Government	$ 7,782,237
Amount due from carriers for unreported freight and passenger revenues and per diem	3,714,790
Amount due from carriers and individuals for joint facility expenses, rents, etc.	384,259
	$ 11,881,286

EXHIBIT C-1—Continued

Note:

Taxes Accrued:

Normal and surtax	$ 7,951,938
Reserve for delayed income and excess profits tax	6,733,340
Other taxes	3,558,211
	$ 18,243,489

This Company is also liable as a guarantor of the following securities:

Guarantor of the Principal and Interest Jointly and Severally with Other Railway Companies:

Norfolk and Portsmouth Belt Line Railroad Company Serial 1½% Notes, due 1940 to 1949 (C. & O and seven companies)	$ 280,000
The Cincinnati Union Terminal Co. First Mortgage 3⅜% Bonds, due 1969 (C. & O. and six companies)	11,564,000
The Cincinnati Union Terminal Co. First Mortgage 2¾% Bonds, due 1974 (C. & O. and six companies)	23,797,000
The Cincinnati Union Terminal Co. First Mortgage 2.6% Bonds, due 1971 (C. & O. and six companies)	2,600,000

Other:

Guaranty of 9.68% of interest on $5,800,000 of The Toledo Terminal Railroad Company First Mortgage 4½% Bonds, due November 1, 1957.	

[fol. 97] (This Page Left Blank Intentionally)

[fol. 98] EXHIBIT C-2

Pere Marquette Railway Company

General Balance Sheet—as of December 31, 1945

Assets

Investments:		
Road and equipment property	$161,960,625	
Improvements on leased property	433,393	
Donations and grants	377,560*	
Investment in transportation property		161,516,458
Accrued depreciation—Road	1,150,329*	
Accrued depreciation—Equipment	37,832,313*	
Accrued amortization of defense projects—Road	84,990*	
Accrued amortization of defense projects—Equipment	7,994,952*	
Investment in transportation property less recorded depreciation and amortization		114,453,874
Sinking funds		870
Capital and other reserve funds		370,886
Miscellaneous physical property		1,179,940
Accrued depreciation—Miscellaneous physical property		96,318*
Miscellaneous physical property less recorded depreciation		1,083,622
Investments in affiliated companies		
Stocks		7,481,885
Bonds		—
All other		7,480,105
Other investments		
Stocks		583,565
Bonds		7,725
All other		96,394
		131,558,926

* Denotes reverse item.

EXHIBIT C-2—Continued

Less—Held by or for Company at date—Bonds (See contra)	300,000
Total investments	131,258,926
Current Assets:	
Cash	8,902,342
Temporary cash investments	4,251,818
Special deposits	879,754
Loans and bills receivable	71
Net balance receivable from agents and conductors	1,040,445
Miscellaneous accounts receivable	908,853
Material and supplies	4,639,564
Interest and dividends receivable	67,006
Accrued accounts receivable	1,356,812
Other current assets	32,269
Total current assets	22,078,934
Deferred Assets:	
Working fund advances	105,353
Insurance and other funds	112,666
Other deferred assets	936,471
Total deferred assets	1,154,490
Unadjusted Debits:	
Prepayments	130,884
Discount on funded debt	187,983
Other unadjusted debits	60,006
Securities issued or assumed—Unpledged:	
Stocks and scrip (See contra)	1,388
Bonds (See contra)	10,000,000
	10,380,261
Less—Held by or for Company at date (See contra)	10,001,388
Total unadjusted debits	378,873
Grand Total	$154,871,223

[fol. 99] EXHIBIT C-2

Pere Marquette Railway Company

General Balance Sheet—as of December 31, 1945

Liabilities

Stock:		
Capital stock	$ 68,675,000	
Less—Held by or for Company at date (See contra)	1,388	
Total Stock outstanding with Public		68,673,612
Long Term Debt:		
Funded debt unmatured	59,749,000	
Equipment obligations	6,357,736	
	66,106,736	
Less—Held by or for Company at date (See contra)	10,300,000	
Total long term debt outstanding		55,806,736
Current Liabilities:		
Traffic and car-service balances—Cr.		2,841,393
Audited accounts and wages payable		2,862,056
Miscellaneous accounts payable		750,359
Interest matured unpaid		23,817
Dividends matured unpaid		123
Unmatured interest accrued		584,629
Unmatured dividends declared		140,000
Accrued accounts payable		1,319,981
Taxes accrued		2,173,221
Other current liabilities		462,085
Total current liabilities		11,157,664
Deferred Liabilities:		
Other deferred liabilities		572,512
Total deferred liabilities		572,512

EXHIBIT C-2—Continued

Unadjusted Credits:	
Premium on funded debt	7,348
Other unadjusted credits	1,447,211
Accrued depreciation—Leased property	21,044
Total unadjusted credits	1,475,603
Surplus:	
Unearned surplus	10,013
Earned surplus—Appropriated	250,625
Earned surplus—Unappropriated	16,924,458
Total surplus	17,185,096
Grand Total	$154,871,223

[fol. 100]

Pere Marquette Railway Company

Notes To General Balance Sheet as of December 31, 1945

Note:

Capital and Other Reserve Funds:		
Amount on deposit with Trustees under various Equipment Trusts for equipment sold or destroyed	$	24,433
Amount on deposit with Trustee of First Mortgage for property sold		43,413
Provision for Sinking Fund contribution		300,000
Dividends unclaimed account of voting trust certificates outstanding from reorganization		3,040
	$	370,886

Note:

Special Deposits:		
For payment of principal, premium and interest on bonds, equipment trusts, etc.	$	328,341
Amount of taxes collected account of Governmental Agencies		551,413
	$	879,754

EXHIBIT C-2—Continued

Note:

Accrued Accounts Receivable:

Amount due from carriers for unreported freight and passenger revenues and per diem	$1,044,482
Tax refund due from U. S. Government	125,251
Amount due from carriers for joint facility expenses, rents, etc.	187,079
	$1,356,812

Note:

Taxes Accrued:

Normal and surtax, excess profits tax	$ 63,169
Reserve for delayed income and excess profits tax	653,991
Other taxes	1,456,061
	$2,173,221

This company is also contingently liable severally, as among the proprietary companies of Toledo Terminal Railroad Company, for 16.12% of the interest on $5,800,000 of that company's First Mortgage 4½% Bonds, due November 1, 1957.

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[fol. 102]

EXHIBIT C-3

The Chesapeake and Ohio Railway Company

Consolidated General Balance Sheet as of December 31, 1945, After Giving Effect to the Acquisition of Pere Marquette Railway Company, by Merger, in Accordance with the Plan.

	ASSETS	The Chesapeake	Pere Marquette	Combined	Adjustment for Acquisition of Pere Marquette	Adjusted and Consolidated
	Investments:					
701	Road and equipment property	$652,990,812.52	$161,960,624.67	$814,951,437.19	—	$814,951,437.19
702	Improvements on leased property	277,847.69	433,393.08	711,240.77	—	711,240.77
702½A	Acquisition adjustment	323,417.15	—	323,417.15	$10,253,148.93	10,576,566.08
702½B	Donations and grants	2,862,140.42	877,559.99	3,739,700.41	—	3,739,700.41
	Investment in transportation property	650,083,102.64	161,516,457.76	811,599,560.40	10,253,148.93	801,346,411.47
702½C	Accrued depreciation—Road	6,742,883.91	1,150,329.31	7,893,213.23	—	7,893,213.23
702½D	Accrued depreciation—Equipment	135,470,199.05	37,832,313.22	173,302,512.27	—	173,302,512.27
702½E	Accrued amortization of defense projects—Road	6,053,492.68	84,989.38	6,138,482.16	—	6,138,482.06
702½F	Accrued amortization of defense projects—Equipment	57,897,562.17	7,994,951.37	65,892,513.54	—	65,892,513.54
	Investment in transportation property less recorded depreciation and amortization	443,918,964.82	114,453,874.48	558,372,839.30	10,253,148.93	548,119,690.37
703	Sinking funds	288,116.27	870.00	288,986.27	—	288,986.27
704	Capital and other reserve funds	2,171,405.14	370,886.15	2,542,291.29	—	2,542,291.29
705	Miscellaneous physical property	8,094,132.20	1,179,939.68	9,274,071.88	—	9,274,071.88
705½	Accrued depreciation—Miscellaneous physical property	1,456,798.35	96,318.27	1,553,116.62	—	1,553,116.62
	Miscellaneous physical property less recorded depreciation	6,637,333.85	1,083,621.41	7,720,955.26	—	7,720,955.26

706	Investments in affiliated companies					
	a. Stocks	45,885,947.61	7,481,884.44	53,367,832.05	34,649,968.02	18,717,864.03
	b. Bonds	2,150,000.00	—	2,150,000.00	—	2,150,000.00
	c. Other secured obligations	700,000.00	—	700,000.00	—	700,000.00
	d. Unsecured notes	10,250,000.00	3,000,000.00	13,250,000.00	—	13,250,000.00
	e. Investment advances	2,158,712.28	4,480,105.44	6,638,817.72	—	6,638,817.72
707	Other investments					
	a. Stocks	18,827,337.76	583,564.85	19,410,902.61	—	19,410,902.61
	b. Bonds	449,000.12	7,725.00	456,725.12	—	456,725.12
	c. Other secured obligations	—	—	—	—	—
	d. Unsecured notes	123,839.25	96,394.28	220,233.53	—	220,233.53
	e. Investment advances	21,118.91	—	21,118.91	—	21,118.91
		533,581,776.01	131,558,926.05	665,140,702.06	44,908,116.95	620,237,585.11
	Less—Held by or for Company at date—Bonds (See contra)	265,000.00	300,000.00	565,000.00	—	565,000.00
		533,316,776.01	131,258,926.05	664,575,702.06	44,908,116.95	619,672,585.11
707½	Reserve for adjustment of investment in securities	*2,686,900.79*	—	*2,686,900.79*	—	*2,686,900.79*
	Total investments	530,629,875.22	131,258,926.05	661,888,801.27	44,908,116.95	616,985,684.32
	Current Assets:					
708	Cash	26,008,220.83	8,902,342.02	34,910,562.85	—	34,910,562.85
709	Temporary cash investments	12,300,000.00	4,251,818.19	16,551,818.19	—	16,551,818.19
711	Special deposits	13,277,772.20	879,753.88	14,157,526.08	—	14,157,526.08
712	Loans and bills receivable	79,050.19	70.82	79,121.01	—	79,121.01
714	Net balance receivable from agents and conductors	1,622,718.52	1,040,445.51	2,663,164.03	—	2,663,164.03
715	Miscellaneous accounts receivable	7,140,419.86	908,852.63	8,049,272.49	—	8,049,272.49
716	Material and supplies	10,013,339.62	4,639,563.99	14,652,903.61	—	14,652,903.61
717	Interest and dividends receivable	192,656.34	67,005.71	259,662.05	—	259,662.05
718	Accrued accounts receivable	11,881,286.32	1,356,812.40	13,238,098.72	—	13,238,098.72
719	Other current assets	115,329.41	32,268.98	147,598.39	—	147,598.39
	Total current assets	82,630,793.29	22,078,934.13	104,709,727.42	—	104,709,727.42

EXHIBIT C-3—Continued

The Chesapeake and Ohio Railway Company

Consolidated General Balance Sheet as of December 31, 1945, After Giving Effect to the Acquisition of Pere Marquette Railway Company, by Merger, in Accordance with the Plan.

	ASSETS	The Chesapeake	Pere Marquette	Combined	Adjustment for Acquisition of Pere Marquette	Adjusted and Consolidated
	Investments:					
	Deferred Assets:					
720	Working fund advances	34,909.93	105,352.63	140,262.56	—	140,262.56
721	Insurance and other funds	—	112,665.87	112,665.87	—	112,665.87
722	Other deferred assets	802,397.67	936,471.04	1,738,868.71	—	1,738,868.71
	Total deferred assets	837,307.60	1,154,489.54	1,991,797.14	—	1,991,797.14
	Unadjusted Debits:					
723	Prepayments	60,151.49	130,884.21	191,035.70	—	191,035.70
725	Discount on funded debt	42,160.64	187,983.11	230,143.75	—	230,143.75
727	Other unadjusted debits	839,663.56	60,006.03	899,669.59	—	899,669.59
728	Securities issued or assumed—Unpledged:					
	Stocks (See contra)	25.00	1,388.05	1,413.05	5,179,250.00	5,180,663.05
	Bonds (See contra)	395,000.00	10,000,000.00	10,395,000.00	—	10,395,000.00
729	Securities issued or assumed—Pledged:					
	Bonds (See contra)	30,000,000.00	—	30,000,000.00	—	30,000,000.00
		31,337,000.69	10,380,261.40	41,717,262.09	5,179,250.00	46,896,512.09
	Less—Held by or for Company at date (See contra)	30,395,025.00	10,001,388.05	40,396,413.05	—	40,396,413.05
	Total unadjusted debits	941,975.69	378,873.35	1,320,849.04	5,179,250.00	6,500,099.04
	Grand Total	$615,039,951.80	$154,871,223.07	$769,911,174.87	*$39,723,866.95*	$730,187,307.92

[fol. 103]

The Chesapeake and Ohio Railway Company

Consolidated General Balance Sheet as of December 31, 1945, After Giving Effect to the Acquisition of Pere Marquette Railway Company, by Merger, in Accordance with the Plan.

	LIABILITIES	The Chesapeake	Pere Marquette	Combined	Adjustment for Acquisition of Pere Marquette	Adjusted and Consolidated
	Stock:					
751	Capital stock					
	The Chesapeake and Ohio Railway					
	Common and scrip (7,657,355 shares—$25.00 par value)	$191,433,944.44	—	$191,433,944.44	—	$191,433,944.44
	Proposed New Issue					
	Common (312,272.2 shares) ($25.00 par value)	—	—	—	$ 7,806,805.00	7,806,805.00
	3½% Convertible Preferred (211,429.4 shares—$100.00 par value)	—	—	—	21,142,940.00	21,142,940.00
	Pere Marquette Railway					
	5% Prior Preference	—	11,200,000.00	11,200,000.00	*11,200,000.00*	—
	5% Preferred	—	12,429,000.00	12,429,000.00	*12,429,000.00*	—
	Common	—	45,046,000.00	45,046,000.00	*45,046,000.00*	—
		191,433,944.44	68,675,000.00	260,108,944.44	*39,725,255.00*	220,383,689.44
	Less—Held by or for Company at date (See contra)	25.00	1,388.05	1,413.05	1,388.05	25.00
		191,433,919.44	68,673,611.95	260,107,531.39	*39,723,866.95*	220,383,664.44
753	Premiums and assessments on capital stock	2,301,093.00	—	2,301,093.00	—	2,301,093.00
	Total Stock	193,735,012.44	68,673,611.95	262,408,624.39	*39,723,866.95*	222,684,757.44

The Chesapeake and Ohio Railway Company

Consolidated General Balance Sheet as of December 31, 1945, After Giving Effect to the Acquisition of Pere Marquette Railway Company, by Merger, in Accordance with the Plan.

	LIABILITIES	The Chesapeake	Pere Marquette	Combined	Adjustment for Acquisition of Pere Marquette	Adjusted and Consolidated
	Long Term Debt:					
755	Funded debt unmatured	194,768,000.00	59,749,000.00	254,517,000.00	—	254,517,000.00
756½	Equipment obligations	40,873,000.00	6,357,736.00	47,230,736.00	—	47,230,736.00
		235,641,000.00	66,106,736.00	301,747,736.00	—	301,747,736.00
	Less—Held by or for Company at date (See contra)	30,660,000.00	10,300,000.00	40,960,000.00	—	40,960,000.00
	Total long term debt outstanding	204,981,000.00	55,806,736.00	260,787,736.00	—	260,787,736.00
	Current Liabilities:					
758	Loans and bills payable	—	—	—	—	—
759	Traffic and car-service balances—Cr.	1,768,268.37	2,841,392.73	4,609,661.10	—	4,609,661.10
760	Audited accounts and wages payable	10,720,290.47	2,862,056.58	13,582,347.05	—	13,582,347.05
761	Miscellaneous accounts payable	2,948,177.23	750,358.93	3,698,536.16	—	3,698,536.16
762	Interest matured unpaid	683,027.14	23,817.22	706,844.36	—	706,844.36
763	Dividends matured unpaid	5,880,531.52	122.75	5,880,654.27	—	5,880,654.27
764	Unmatured interest accrued	1,816,158.76	584,628.88	2,400,787.64	—	2,400,787.64
765	Unmatured dividends declared	—	140,000.00	140,000.00	—	140,000.00
766	Accrued accounts payable	2,091,475.24	1,319,981.17	3,411,456.41	—	3,411,456.41
767	Taxes accrued	18,243,489.13	2,173,220.88	20,416,710.01	—	20,416,710.01
768	Other current liabilities	583,402.21	462,084.63	1,045,486.84	—	1,045,486.84
	Total current liabilities	44,734,820.07	11,157,663.77	55,892,483.84	—	55,892,483.84
	Deferred Liabilities:					
770	Other deferred liabilities	1,550,367.59	572,512.36	2,122,879.95	—	2,122,879.95
	Total deferred liabilities	1,550,367.59	572,512.36	2,122,879.95	—	2,122,879.95
	Unadjusted Credits:					
772	Premium on funded debt	21,875.64	7,347.87	29,223.51	—	29,223.51
778	Other unadjusted credits	5,372,736.98	1,447,211.36	6,819,948.34	—	6,819,948.34
779	Accrued depreciation — Leased property	35,841.47	21,044.00	56,885.47	—	56,885.47
	Total unadjusted credits	5,430,454.09	1,475,603.23	6,906,057.32	—	6,906,057.32
	Surplus:					
784	Unearned surplus	281,135.37	10,013.29	291,148.66	—	291,148.66
785	Earned surplus—Appropriated	16,408,663.67	250,625.00	16,659,288.67	—	16,659,288.67
786	Earned surplus—Unappropriated	147,918,498.57	16,924,457.47	164,842,956.04	—	164,842,956.04
	Total surplus	164,608,297.61	17,185,095.76	181,793,393.37	—	181,793,393.37
	Grand Total	$615,039,951.80	$154,871,223.07	$769,911,174.87	$39,725,866.95	$730,187,307.92

NOTE:—This statement reflects the combined accounts after giving effect to the exchange of securities under the plan of merger. Final balance sheets must have approval of the Bureau of Accounts of the Interstate Commerce Commission as of the date the merger is consummated.

[fol. 104] EXHIBIT C-4

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

INCOME STATEMENT—YEAR 1945

1. Operating Income		
Railway Operating Revenues		$203,332,146
Railway Operating Expenses	(A)	184,685,127
Net Revenue from Railway Operations		18,647,019
Railway Tax Accruals	(B)	2,803,083
Railway Operating Income		15,843,936
Rent Income		
Hire of Freight Cars—Credit Balance		7,980,961
Rent from Locomotives		300,991
Rent from Passenger-train Cars		153,308
Rent from Floating Equipment		45,378
Rent from Work Equipment		13,736
Joint Facility Rent Income		198,315
Total Rent Income		8,692,689
Rents Payable		
Rent for Locomotives		4,034
Rent for Passenger-train Cars		598,938
Rent for Floating Equipment		27,521
Rent for Work Equipment		4,097
Joint Facility Rents		1,876,780
Total Rents Payable		2,511,370
Net Rents		6,181,319
Net Railway Operating Income		22,025,255
II. Other Income		
Revenues from Miscellaneous Operations		48,355
Income from Lease of Road and Equipment		47,321
Miscellaneous Rent Income		153,656

EXHIBIT C-4—Continued

Miscellaneous Nonoperating Physical Property	91,352
Dividend Income	958,664
Income from Funded Securities	225,830
Income from Unfunded Securities and Accounts	227,842
Income from Sinking and Other Reserve Funds	2,694
Release of Premiums on Funded Debt	10,754
Miscellaneous Income	45,682
Total Other Income	1,812,150
Total Income	23,837,405
III. Miscellaneous Deductions from Income	
Expenses of Miscellaneous Operations	37,466
Taxes on Miscellaneous Operating Property	1,819
Miscellaneous Rents	46,136
Miscellaneous Tax Accruals	49,324
Miscellaneous Income Charges	247,531
Total Miscellaneous Deductions	382,276
Income Available for Fixed Charges	23,455,129
IV. Fixed Charges	
Rent for Leased Roads and Equipment	42,988
Interest on Funded Debt	
(a) Fixed Interest	7,003,784
Interest on Unfunded Debt	15,473
Amortization of Discount on Funded Debt	13,037
Total Fixed Charges	7,075,282
Net Income	16,379,847

EXHIBIT C-4—Continued

VI. Disposition of Net Income

Income Applied to Sinking and Other Reserve Funds		488,144
Total Appropriations of Income		488,144
Income Balance Transferred to Earned Surplus		$ 15,891,703
(A) Operating Expenses includes adjustment for accelerated amortization of defense facilities	$39,591,543	
(B) Railway Tax Accruals includes credit for Income and Excess Profits Taxes due to adjustment for accelerated amortization	$31,299,457	

[fol. 105]

EXHIBIT C-5

PERE MARQUETTE RAILWAY COMPANY

INCOME STATEMENT—YEAR 1945

1. Operating Income		
Railway Operating Revenues		$ 51,500,687
Railway Operating Expenses	(A)	45,558,794
Net Revenue from Railway Operations		5,941,893
Railway Tax Accruals	(B)	1,201,808
Railway Operating Income		4,740,085
Rent Income		
Hire of Freight Cars—Credit Balance		—
Rent from Locomotives		367,579
Rent from Passenger-train Cars		64,187
Rent from Floating Equipment		—

EXHIBIT 5—Continued

Rent from Work Equipment	58,126
Joint Facility Rent Income	459,775
Total Rent Income	949,667
Rents Payable	
Hire of Freight Cars—Debit Balance	34,518
Rent for Locomotives	313,568
Rent for Passenger-train Cars	191,112
Rent for Floating Equipment	4,135
Rent for Work Equipment	57,540
Joint Facility Rents	1,322,649
Total Rents Payable	1,923,522
Net Rents	973,855*
Net Railway Operating Income	3,766,230
II. Other Income	
Income from Lease of Road and Equipment	12,807
Miscellaneous Rent Income	170,363
Miscellaneous Nonoperating Physical Property	29,865
Dividend Income	232,126
Income from Funded Securities	18,991
Income from Unfunded Securities and Accounts	64,246
Income from Sinking and Other Reserve Funds	4,764
Release of Premiums on Funded Debt	3,385
Miscellaneous Income	478,818
Delayed Income Credits	—
Total Other Income	1,015,365
Total Income	4,781,595

* Denotes reverse item.

EXHIBIT 5—Continued

III. Miscellaneous Deductions from Income	
Miscellaneous Rents	48,694
Miscellaneous Tax Accruals	14,222
Separately Operated Properties—Loss	14,114
Miscellaneous Income Charges	31,201
Total Miscellaneous Deductions	108,231
Income Available for Fixed Charges	4,673,364
IV. Fixed Charges	
Rent for Leased Roads and Equipment	128,016
Interest on Funded Debt	
(a) Fixed Interest	2,397,994
Interest on Unfunded Debt	2,771
Amortization of Discount on Funded Debt	5,462
Total Fixed Charges	2,534,243
Net Income	2,139,121
VI. Disposition of Net Income	
Income Applied to Sinking and Other Reserve Funds	416,667
Total Appropriations of Income	416,667
Income Balance Transferred to Earned Surplus	$ 1,722,454

(A) Operating Expenses includes adjustment for accelerated amortization of defense facilities	*$3,787,393
(B) Railway Tax Accruals includes credit for Income and Excess Profits Taxes due to adjustment for accelerated amortization and invested capital	$2,036,285

*Denotes reverse item.

[fol. 106] EXHIBIT C-6

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
PERE MARQUETTE RAILWAY COMPANY

COMBINED INCOME STATEMENT—YEAR 1945

I. Operating Income		
Railway Operating Revenues		$254,832,833
Railway Operating Expenses	(A)	230,243,921
Net Revenue from Railway Operations		24,588,912
Railway Tax Accruals	(B)	4,004,891
Railway Operating Income		20,584,021
Rent Income		
Hire of Freight Cars—Credit Balance		7,946,443
Rent from Locomotives		668,570
Rent from Passenger-train Cars		217,495
Rent from Floating Equipment		45,378
Rent from Work Equipment		71,862
Joint Facility Rent Income		658,090
Total Rent Income		9,607,838
Rents Payable		
Rent for Locomotives		317,602
Rent for Passenger-train Cars		790,050
Rent for Floating Equipment		31,656
Rent for Work Equipment		61,637
Joint Facility Rents		3,199,429
Total Rents Payable		4,400,374
Net Rents		5,207,464
Net Railway Operating Income		25,791,485
II. Other Income		
Revenues from Miscellaneous Operations		48,355
Income from Lease of Road and Equipment		60,128
Miscellaneous Rent Income		324,019

EXHIBIT 6—Continued

Miscellaneous Nonoperating Physical Property	121,217
Dividend Income	1,190,790
Income from Funded Securities	244,821
Income from Unfunded Securities and Accounts	292,088
Income from Sinking and Other Reserve Funds	7,458
Release of Premiums on Funded Debt	14,139
Miscellaneous Income	524,500
Total Other Income	2,827,515
Total Income	28,619,000
III. Miscellaneous Deductions from Income	
Expenses of Miscellaneous Operations	37,466
Taxes on Miscellaneous Operating Property	1,819
Miscellaneous Rents	94,830
Miscellaneous Tax Accruals	63,546
Separately Operated Properties—Loss	14,114
Miscellaneous Income Charges	278,732
Total Miscellaneous Deductions	490,507
Income Available for Fixed Charges	28,128,493
IV. Fixed Charges	
Rent for Leased Roads and Equipment	171,004
Interest on Funded Debt	
(a) Fixed Interest	9,401,778
Interest on Unfunded Debt	18,244
Amortization of Discount on Funded Debt	18,499
Total Fixed Charges	9,609,525
Net Income	18,518,968

EXHIBIT 6—Continued

VI. Disposition of Net Income

Income Applied to Sinking and Other Reserve Funds		904,811
Total Appropriations of Income		904,811
Income Balance Transferred to Earned Surplus		$17,614,157
(A) Operating Expenses includes adjustment for accelerated amortization of defense facilities	$43,378,936	
(B) Railway Tax Accruals includes credit for Income and Excess Profits Taxes due to adjustment for accelerated amortization	$33,335,742	

Note: No eliminations have been made of intercompany transactions, as rental of equipment, car repairs, etc.

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(Here follow 3 pasters, side folios 108-109, 110-111, 112-113)

EXHIBIT C-7

The Chesapeake and Ohio Railway Company

Income Account (Stated in thousands of dollars)

For the calendar years shown, adjusted to give effect to reduction in interest on funded debt

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940
Operating revenues	$131,588	$119,540	$ 98,709	$105,953	$109,475	$114,025	$135,538	$127,347	$106,376	$118,722	$132,720
Operating expenses:											
Depreciation and amortization	6,202	7,219	7,075	7,108	6,964	8,103	8,512	8,272	8,297	8,248	8,456
Other operating expenses	76,826	67,279	48,890	51,218	53,851	55,187	61,502	64,257	56,149	60,612	65,632
Total operating expenses	83,028	74,498	55,965	58,326	60,815	63,290	70,014	72,529	64,446	68,860	74,088
Net revenue from railway operations	48,560	45,042	42,744	47,627	48,660	50,735	65,524	54,818	41,930	49,862	58,632
Railway tax accruals—Income and excess profits taxes	4,020	3,465	3,594	3,975	4,425	4,865	5,619	6,116	4,087	4,744	9,251
Railway tax accruals—All other taxes	5,779	6,160	5,748	5,601	5,873	5,815	7,699	6,674	8,509	8,552	8,990
Railway operating income	38,761	35,417	33,402	38,051	38,362	40,055	52,206	42,028	29,334	36,566	40,391
Net equipment and joint facility rents	754	Dr 87	Dr 900	Dr 1,084	Dr 1,364	Dr 117	529	587	Dr 351	Dr 212	427
Net railway operating income	39,515	35,330	32,502	36,967	36,998	39,938	52,735	42,615	28,983	36,354	40,818
Inter-company dividends:											
Pere Marquette	1,726	437	—	—	—	—	60	34	—	—	—
Other income less deductions	3,092	1,548	1,335	1,274	749	819	1,198	1,259	802	Dr 126	1,041
Net income available for interest	44,333	37,315	33,837	38,241	37,747	40,757	53,993	43,908	29,785	36,228	41,859
Interest on funded debt as reported	10,188	10,619	10,309	10,001	9,685	9,717	10,202	9,345	9,103	8,885	8,268
Net income as reported	34,145	26,696	23,528	28,240	28,062	31,040	43,791	34,563	20,682	27,343	33,591
Add (Note 1)											
Interest on debt as reported	10,188	10,619	10,309	10,001	9,685	9,717	10,202	9,345	9,103	8,885	8,268
Deduct (Note 1)											
Interest on debt outstanding December 31, 1945	6,922	6,922	6,922	6,922	6,922	6,922	6,922	6,922	6,922	6,922	6,922
Estimated increase in Federal income and excess profits taxes due to above adjustment	449	508	466	423	378	384	493	368	415	373	674
Adjusted net income	36,962	29,885	26,449	30,896	30,447	33,451	46,578	36,623	22,448	28,933	34,263
Earnings per share for 7,657,354 shares at December 31, 1945 (no deduction for preferred dividends)	$4.83	$3.90	$3.45	$4.03	$3.98	$4.37	$6.08	$4.78	$2.93	$3.78	$4.47
Earnings per share as reported (Note 2)	$4.46	$3.49	$3.07	$3.69	$3.67	$4.05	$5.72	$4.43	$2.62	$3.49	$4.31

* Tax credit resulting from capital losses on sale of securities increased net income approximately $12,000,000.

† Reflects acceleration of amortization of investment in defense facilities.

NOTE 1.—Adjustment to restate income to basis of present interest on debt.

NOTE 2.—Reflects deductions for dividends on 6½% preferred stock prior to 1937 and 4% preference stock, Series A, 1937 to 1943, inclusive.

1940	1941	1942	1943	1944	1945
$132,720	$150,237	$181,810	$208,512	$216,536	$203,332
8,456	8,615	11,282	15,618	19,719	59,717†
65,632	71,624	84,133	99,427	117,148	124,968
74,088	80,239	95,415	115,045	136,867	184,685
58,632	69,998	86,395	93,467	79,669	18,647
9,251	9,337*	39,255	48,944	38,838	Cr 8,853†
8,990	10,342	10,743	11,634	12,317	11,656
40,391	50,319	36,397	32,889	28,514	15,844
427	1,240	3,247	4,327	4,299	6,182
40,818	51,559	39,644	37,216	32,813	22,026
1,041	1,177	1,003	1,439	1,581	1,358
41,859	52,736	40,647	38,655	34,394	23,384
8,268	7,796	7,493	7,296	7,054	7,004
33,591	44,940*	33,154	31,359	27,340	16,380
8,268	7,796	7,493	7,296	7,054	7,004
6,922	6,922	6,922	6,922	6,922	6,922
674	514	462	302	113	38
34,263	45,300	33,263	31,431	27,359	16,429
$4.47	$5.92	$4.34	$4.10	$3.57	$2.15
$4.31	$5.79	$4.25	$4.04	$3.57	$2.14

[fols. 110–111]

EXHIBIT C–8

Pere Marquette Railway Company

Income Account (Stated in thousands of dollars)

For the calendar years shown, adjusted to give effect to reduction in interest on funded debt

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
Operating revenues	$ 37,206	$ 27,338	$ 21,435	$ 21,934	$ 24,591	$ 28,470	$ 32,459	$ 32,229	$ 25,445	$ 30,233	$ 33,007	$ 39,048
Operating expenses:												
Depreciation and amortization	2,005	2,317	2,320	2,317	2,237	2,558	2,539	2,567	2,397	2,847	2,257	2,389
Other operating expenses	27,025	20,815	15,870	15,576	17,189	18,579	20,977	22,363	19,090	21,132	22,683	25,974
Total operating expenses	29,030	23,132	18,190	17,893	19,426	21,137	22,516	24,930	21,487	23,479	24,940	28,363
Net revenue from railway operations	8,176	4,206	3,245	4,041	5,165	7,333	8,943	7,299	3,958	6,754	8,067	10,685
Railway tax accruals—Income and excess profits taxes	Cr 77	Cr 18	48	58	52	119	475	205	54	108	308	1,099
Railway tax accruals—All other taxes	2,020	1,763	1,526	1,013	1,120	1,089	1,539	1,440	1,752	1,869	2,101	2,304
Railway operating income	6,233	2,461	1,671	2,970	3,993	6,125	6,929	5,654	2,152	4,779	5,658	7,282
Net equipment and joint facility rents—Dr.	1,691	1,176	1,346	1,245	1,374	1,296	1,350	1,194	1,297	1,426	1,595	1,167
Net railway operating income	4,542	1,285	325	1,725	2,619	4,829	5,579	4,460	855	3,353	4,063	6,115
Other income less deductions	403	434	250	211	213	185	448	462	164	215	394	335
Net income available for interest	4,945	1,719	575	1,936	2,832	5,014	6,027	4,922	1,019	3,568	4,457	6,450
Interest on funded debt as reported	2,930	3,582	3,620	3,535	3,443	3,380	3,269	3,253	3,278	3,239	3,204	3,213
Net income as reported	2,015	d 1,863	d 3,045	d 1,599	d 611	1,634	2,758	1,669	d 2,259	329	1,252	3,237
Add (Note 1)												
Interest on debt as reported	2,930	3,582	3,620	3,535	3,443	3,380	3,269	3,253	3,278*	8,930	8,204	3,212
Deduct (Note 1)												
Interest on debt outstanding December 31, 1945	1,827	1,827	1,827	1,827	1,827	1,827	1,827	1,827	1,827	1,827	1,827	1,827
Estimated increase in Federal and Canadian income and excess profits taxes due to above adjustment	132	—	—	—	—	210	407	367	—	154	330	430
Adjusted net income	2,986	d 108	d 1,252	109	1,005	2,976	3,793	2,728	d 808	1,587	2,300	4,192
Dividend requirements for 111,999 shares $100 par Prior Preference 5% Cumulative Stock outstanding December 31, 1945	560	560	560	560	560	560	560	560	560	560	560	560
Balance available for Preferred and Common stock	2,426	d 668	d 1,812	d 451	445	2,416	3,233	2,168	d 1,368	1,027	1,740	3,633
Dividend requirements for 124,288 shares $100 par Preferred 5% Cumulative Stock outstanding December 31, 1945	621	621	621	621	621	621	621	621	621	621	621	621
Balance available for Common stock	1,805	d 1,289	d 2,433	d 1,072	d 176	1,795	2,612	1,547	d 1,989	496	1,119	3,012
Earnings per share of 450,449 shares of $100 par Common stock outstanding December 31, 1945	$4.00	d $2.86	d $5.40	d $2.38	d $0.39	$3.98	$5.80	$3.42	d $4.42	$0.90	$2.48	$6.69

* Reflects acceleration of amortization of investment in defense facilities.

NOTE 1.—Adjustment to restate income to basis of present interest on debt.

d—deficit.

1940	1941	1942	1943	1944	1945
$ 33,007	$ 39,048	$ 44,311	$ 55,053	$ 56,368	$ 51,501
2,257	2,389	3,073	3,873	4,226	7,874*
22,683	25,974	29,471	35,325	38,994	37,685
24,940	28,363	32,544	39,198	43,220	45,559
8,067	10,685	11,767	15,855	13,088	5,942
308	1,099	2,464	5,835	4,567	Cr 1,465*
2,101	2,304	2,255	2,677	2,653	2,667
5,658	7,282	6,948	7,243	5,912	4,749
1,595	1,167	672	1,240	996	974
4,063	6,115	6,276	6,002	5,010	3,766
394	335	511	531	722	771
4,457	6,450	6,788	6,554	5,732	4,587
3,204	3,213	3,217	2,984	2,721	2,398
1,252	3,237	3,571	3,620	3,012	2,139
3,204	3,212	3,217	2,934	2,721	2,398
1,827	1,827	1,827	1,827	1,827	1,827
330	430	548	974	540	228
2,300	4,192	4,413	3,753	3,366	2,432
560	560	560	560	560	560
1,740	3,633	3,853	3,193	3,866	1,922
621	621	621	621	621	621
1,119	3,012	3,232	2,572	2,135	1,801
$2.48	$6.69	$7.13	$5.71	$4.25	$2.39

[fols. 112-113]

EXHIBIT C-9.

The Chesapeake and Ohio Railway Company

Pere Marquette Railway Company

Consolidated Income Account (Stated in thousands of dollars)

For the calendar years shown, adjusted to give effect to reduction in interest on funded debt, and to eliminate inter-company dividends

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
Operating revenues	$168,794	$146,878	$120,144	$127,887	$134,066	$142,495	$167,997	$159,576	$131,821	$148,955	$165,727	$189,285
Operating expenses:												
Depreciation and amortization	8,207	9,536	9,395	9,425	9,201	10,661	11,051	10,839	10,694	10,595	10,713	11,004
Other operating expenses	103,851	88,094	64,760	66,794	71,040	73,766	82,479	86,620	75,239	81,744	88,315	97,598
Total operating expenses	112,058	97,630	74,155	76,219	80,241	84,427	93,530	97,459	85,933	92,339	99,028	108,602
Net revenue from railway operations	56,736	49,248	45,989	51,668	53,825	58,068	74,467	62,117	45,888	56,616	66,699	80,683
Railway tax accruals—Income and excess profits taxes	3,943	3,447	3,642	4,033	4,477	4,984	6,094	6,321	4,141	4,850	9,559	10,436
Railway tax accruals—All other taxes	7,799	7,923	7,274	6,614	6,993	6,994	9,238	8,114	10,261	10,421	11,091	12,646
Railway operating income	44,994	37,878	35,073	41,021	42,355	46,180	59,135	47,682	31,486	41,345	46,049	57,601
Net equipment and joint facility rents—Dr.	937	1,263	2,246	2,329	2,738	1,413	821	607	1,648	1,638	1,168	Cr 73
Net railway operating income	44,057	36,615	32,827	38,692	39,617	44,767	58,314	47,075	29,838	39,707	44,881	57,674
Inter-company dividends	1,726	437	—	—	—	—	60	34	—	—	—	—
Other income less deductions	3,495	1,982	1,585	1,485	962	1,004	1,646	1,721	966	89	1,435	1,512
Net income available for interest	49,278	39,034	34,412	40,177	40,579	45,771	60,020	48,830	30,804	39,796	46,316	59,186
Interest on funded debt as reported	13,118	14,201	13,929	13,536	13,128	13,097	13,471	12,598	12,381	12,124	11,472	11,009
Net income as reported	36,160	24,833	20,483	26,641	27,451	32,674	46,549	36,232	18,423	27,672	34,844	48,177
Less—												
Inter-company dividends	1,726	437	—	—	—	—	60	34	—	—	—	—
Net income, inter-company dividends eliminated	34,443	24,396	20,483	26,641	27,451	32,674	46,489	36,198	18,423	27,672	34,844	48,177
Add (Note 1)												
Interest on funded debt as reported	13,118	14,201	13,929	13,536	13,128	13,097	13,471	12,598	12,381	12,124	11,472	11,009
Deduct (Note 1)												
Interest on debt outstanding December 31, 1945	8,749	8,749	8,749	8,749	8,749	8,749	8,749	8,749	8,749	8,749	8,749	8,749
Estimated net increase in Federal and Canadian income and excess profits taxes due to adjustment of interest and elimination of inter-company dividends	547	499	466	423	378	594	899	629	415	527	1,004	944
Adjusted net income	38,256	29,349	25,197	31,005	31,452	36,428	50,312	39,418	21,640	30,520	36,563	49,493
Dividend requirements for 200,269 shares (after exchange) of Unified Company 3½% Preferred Stock	701	701	701	701	701	701	701	701	701	701	701	701
Balance available for Common stock	37,555	28,648	24,496	30,304	30,751	35,727	49,611	38,717	20,939	29,819	35,862	48,792
Adjusted earnings per share on 7,807,096 shares (after exchange) of Unified Company Common Stock	$4.81	$3.67	$3.14	$3.83	$3.94	$4.58	$6.35	$4.96	$2.68	$3.82	$4.59	$6.25

* Reflects acceleration of amortization of investment in defense facilities.

NOTE 1.—Adjustment to restate income to basis of present interest on debt.

1941	1942	1943	1944	1945
$189,285	$226,121	$263,565	$272,839	$254,833
11,004	14,355	19,491	23,945	67,593*
97,598	113,604	134,752	156,142	162,651
108,602	127,959	154,243	180,087	230,244
80,683	98,162	109,322	92,752	24,589
10,436	41,719	54,879	43,845	Cr 10,818*
12,646	13,098	14,311	14,975	14,323
57,601	43,345	40,182	34,432	20,584
Cr 73	Cr 2,575	Cr 3,087	Cr 3,891	Cr 5,207
57,674	45,920	43,219	37,823	25,781
1,512	1,514	1,990	2,304	2,130
59,186	47,434	45,209	40,127	27,921
11,009	10,710	10,230	9,775	9,402
48,177	36,724	34,979	30,352	18,519
—	—	—	—	—
48,177	36,274	34,979	30,352	18,519
11,009	10,710	10,230	9,775	9,402
8,749	8,749	8,749	8,749	8,749
944	1,010	1,450	643	261
49,493	37,675	35,010	30,735	18,911
701	701	701	701	701
48,792	36,974	34,309	30,034	18,210
$6.25	$4.78	$4.39	$3.85	$2.33

[fol. 114]

EXHIBIT C-10

The Chesapeake and Ohio Railway Company

Statement of Surplus

	1941	1942	1943	1944	1945
Unearned Surplus	$ —	$ —	$ 279,729	$ 281,135	$ 281,135
Earned Surplus—Appropriated					
Additions to Property Through Income and Surplus	26,945,664	26,561,773	23,859,636	9,846,552	9,626,297
Funded Debt Retired Through Income and Surplus	4,492,771	5,190,851	5,538,526	5,996,676	6,494,251
Sinking Fund Reserves	756,292	580,438	749,311	587,317	288,116
Excess Profits Tax Post-War Refund Reserve	—	—	87,135	—	—
Total Earned Surplus—Appropriated	32,194,727	32,333,062	30,234,608	16,430,545	16,408,664
Earned Surplus—Unappropriated					
Credits:					
Credit Balance (at beginning of year)	166,662,780	137,405,355	136,509,603	139,019,909	153,142,253
Credit Balance Transferred from Income	44,419,162	32,641,351	30,852,133	26,839,280	15,891,703
Credits from Retired Road and Equipment	3,862	3,895	—	—	—
Donations	61,319	34,200	—	—	—
Miscellaneous Credits	1,413,361	9,091,684	697,821	14,321,079	5,222,101
Total Credits	212,560,484	179,176,485	168,059,557	180,180,268	174,256,057
Debits:					
Surplus Applied to Sinking and Other Reserve Funds	66,271	10,140	10,000	10,025	16,288
Dividend Appropriations of Surplus	27,410,828	27,410,794	27,258,320	26,990,739	26,239,870
Surplus Appropriated for Investment in Physical Property	61,319	34,200	—	—	—
Debt Discount Extinguished Through Surplus	282,634	48,960	—	—	—
Miscellaneous Appropriations of Surplus	969,789	—	87,135	—	—
Debits from Retired Road and Equipment	46,364,288	2,106,634	—	—	—
Miscellaneous Debits		13,056,154	1,684,193	227,251	81,400
Total Debits	75,155,129	42,666,882	29,039,648	27,038,015	26,337,558
Total Earned Surplus—Unappropriated	137,405,355	136,509,603	139,019,909	153,142,253	147,918,499
Total Surplus	$169,600,082	$168,842,665	$169,534,246	$169,853,933	$164,608,298

[fol. 115]

Exhibit C-11

Pere Marquette Railway Company

Statement of Surplus

	1941	1942	1943	1944	1945
Unearned Surplus	$ —	$ —	$ —	$ —	$ 10,013
Earned Surplus—Appropriated					
Additions to Property Through Income and Surplus	262,283	267,844	—	—	—
Excess Profits Tax Post-War Refund Reserve	—	—	551,106	—	—
Funded Debt Retired Through Income and Surplus	—	—	—	—	249,755
Sinking Fund Reserve	—	—	—	—	870
Total Earned Surplus—Appropriated	262,283	267,844	551,106	—	250,625
Earned Surplus—Unappropriated					
Credits:					
Credit Balance (at beginning of year)	5,353,396	7,374,054	10,536,408	14,552,099	18,008,199
Credit Balance Transferred from Income	3,235,656	3,569,066	3,619,520	3,012,076	1,722,454
Credits from Retired Road and Equipment	1,179	486	—	—	—
Donations	1,367	5,561	—	—	—
Miscellaneous Credits	173,275	682,589	1,030,652	728,051	161,506
Total Credits	8,764,873	11,631,756	15,186,580	18,292,226	19,892,159
Debits:					
Dividend Appropriations of Surplus	—	—	—	—	560,000
Surplus Appropriated for Investment in Physical Property	1,367	5,561	—	—	—
Debt Discount Extinguished Through Surplus	7,125	4,540	—	—	—
Miscellaneous Appropriations of Surplus	—	—	551,106	43,145	—
Debits from Retired Road and Equipment	393,692	1,028,709	—	—	—
Miscellaneous Debits	988,635	56,538	83,375	240,882	2,407,701
Total Debits	1,390,819	1,095,348	634,481	284,027	2,967,701
Total Earned Surplus—Unappropriated	7,374,054	10,536,408	14,552,099	18,008,199	16,924,458
Total Surplus	$ 7,636,337	$10,804,252	$15,103,205	$18,008,199	$17,185,096

(Here follow 2 pasters, side folios 116, 117)

[fol. 116]

EXHIBIT C-12

The Chesapeake and Ohio Railway Company

Capitalization as of December 31, 1945

	Interest Rate	Date of Maturity	Total Par Value Authorized	Total Nominally or Actually Outstanding	Held by or for Company	Held by Company in its Treasury Pledged	Outstanding in Hands of Public
Funded Debt Unmatured:							
Mortgage Bonds:							
Potts Creek Branch—First	4%	July 1, 1946	$ 600,000	$ 600,000	$ 265,000		$ 335,000
Norfolk Terminal and Transportation Co.—First	5%	Feb. 1, 1948	500,000	500,000			500,000
Kanawha Bridge & Terminal Co.—First	5%	Apr. 1, 1948	500,000	274,000			274,000
Col. & Hock. Valley R. R. Co.—Ex. First	4%	Oct. 1, 1948	1,401,000	1,401,000			1,401,000
Columbus & Toledo R. R. Co.—Ex. First	4%	Aug. 1, 1955	2,500,000	2,441,000			2,441,000
Refunding and Improvement—Series G-1 to G-25	Various	Feb. 1, 1966	24,800,000	19,280,000			19,280,000
Rich. & Alleghany Division—First	4%	Jan. 1, 1989	6,000,000	6,000,000			6,000,000
Rich. & Alleghany Division—Second	4%	Jan. 1, 1989	1,000,000	998,000			998,000
General	4½%	Mar. 1, 1992	80,204,000	80,204,000		$80,000,000	50,204,000
Greenbrier Ry. Co.—Ex. First	3½%	Mar. 1, 1992	604,000	604,000			604,000
Refunding and Improvement—Series "D"	3½%	May 1, 1996	40,362,000	37,484,000	191,000		37,293,000
Refunding and Improvement—Series "E"	3½%	Aug. 1, 1996	29,500,000	27,601,000	304,000		27,397,000
Hocking Valley Ry. Co.—First Consld.	4½%	July 1, 1999	16,156,000	15,851,000			15,851,000
Total Mortgage Bonds			$204,127,000	$193,238,000	$ 660,000	$ 80,000,000	$162,578,000
Miscellaneous Obligations:							
Serial notes—Issue of 1935	Various	July 15, 1946	$ 15,300,000	$ 1,530,000			$ 1,530,000
Total Funded Debt Unmatured			$219,427,000	$194,768,000	$ 660,000	$ 30,000,000	$164,108,000
Equipment Obligations:							
Equipment Trust Certificates:							
Series of 1935	3%	Oct. 1, 1950	$ 9,000,000	$ 3,000,000			$ 3,000,000
Series of 1936	2¼%	June 15, 1946	9,280,000	928,000			928,000
Series of 1937	2%	Mar. 1, 1947	4,000,000	800,000			800,000
Series of 1939	2½%	Oct. 1, 1949	4,200,000	1,680,000			1,680,000
Series of 1940	1¾%	Aug. 1, 1950	2,500,000	1,250,000			1,250,000
Series of 1941	1⅝%	May 1, 1951	5,100,000	3,060,000			3,060,000
Second Series of 1941	1⅝%	June 15, 1951	3,100,000	1,860,000			1,860,000
Third Series of 1941	1⅝%	Aug. 1, 1951	4,300,000	2,580,000			2,580,000
Series of 1942	1¾%	Feb. 15, 1952	5,150,000	3,605,000			3,605,000
Series of 1943	1¾%	May 1, 1953	5,200,000	4,160,000			4,160,000
Series of 1944	1¾%	Apr. 1, 1954	2,200,000	1,980,000			1,980,000
Second Series of 1944	1¾%	July 15, 1954	2,500,000	2,250,000			2,250,000
Third Series of 1944	1¾%	Sept. 1, 1954	2,500,000	2,250,000			2,250,000
Fourth Series of 1944	1¾%	Sept. 15, 1954	2,500,000	2,250,000			2,250,000
Fifth Series of 1944	1¾%	Oct. 1, 1954	2,200,000	1,980,000			1,980,000
Sixth Series of 1944	1¾%	Nov. 15, 1954	3,600,000	3,240,000			3,240,000
Series of 1945	1⅝%	May 15, 1955	2,500,000	2,500,000			2,500,000
Second Series of 1945	1½%	July 1, 1955	1,500,000	1,500,000			1,500,000
Total Equipment Obligations			$ 71,330,000	$ 40,873,000			$ 40,873,000
		No. Shares	Par Value				
Capital Stock:							
Common and scrip		7,657,355	$25	$191,433,944	$ 25		$191,433,919
Premium on Common Stock							2,301,093
Total Stock							$193,735,012
Total Capitalization							$398,716,012

[fol. 117]

EXHIBIT C-13

Pere Marquette Railway Company

Capitalization as of December 31, 1945

	Interest Rate	Date of Maturity	Total Par Value Authorized	Total Nominally or Actually Outstanding	Held by or for Company	Held by Company in its Treasury Pledged	Outstanding in Hands of Public
Funded Debt Unmatured:							
Mortgage Bonds:							
P. M. Ry. Co.—First, Series "D"	3⅜%	Mar. 1, 1980	$ 60,000,000	$ 59,749,000	$ 10,300,000		$ 49,449,000
Total Mortgage Bonds			$ 60,000,000	$ 59,749,000	$ 10,300,000		$ 49,449,000
Total Funded Debt Unmatured			$ 60,000,000	$ 59,749,000	$ 10,300,000		$ 49,449,000
Equipment Obligations:							
Equipment Trust Certificates:							
Series of 1936	2½%	July 1, 1946	$ 1,220,000	$ 122,000			$ 122,000
Series of 1937	2¾%	May 1, 1947	1,940,000	388,000			388,000
Series of 1940	2%	Nov. 15, 1950	2,220,000	1,110,000			1,110,000
Series of 1941	2⅛%	June 1, 1956	2,775,000	2,035,000			2,035,000
Series of 1942	2%	June 15, 1952	680,000	476,000			476,000
Series of 1944	2¼%	Feb. 1, 1959	2,220,000	2,072,000			2,072,000
Equipment Contracts:							
Electro-Motive Division, General Motors Corp.—Assigned to J. P. Morgan and Co., Inc.	1.9%	Nov. 1, 1947	251,280	92,136			92,136
Electro-Motive Division, General Motors Corp.—Assigned to Cleveland Trust Company	1.609%	Nov. 1, 1955	62,600	62,600			62,600
Total Equipment Obligations			$ 11,368,880	$ 6,357,736			$ 6,357,736
		No. Shares	Par Value				
Capital Stock:							
Common and Scrip		450,460	$100	$ 45,046,000	$ 1,128		$ 45,044,872
Prior Preference and scrip		112,000(a)	100	11,200,000	76		11,199,924
Preferred and Scrip		124,290(b)	100	12,429,000	184		12,428,816
Total Stock				$ 63,675,000	$ 1,388		$ 68,673,612
Total Capitalization							$124,480,348

Unpaid accumulated dividends as of December 31, 1945 amounted to:

(a) $4,013,323.34, or $35.83 per share.

(b) $8,959,237.50, or $72.00 per share.

[fol. 118]

11—258

EXHIBIT C–14

The Chesapeake and Ohio Railway Company

Securities Owned December 31, 1945

	Number of Shares or Face Value	Par or Face Value	Book Value
Investments in Carrier Companies Directly Connected with Chesapeake and Ohio Railway Operations:			
The Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company			
Common Stock	15,000*	$ 1,500,000.00	$ 146,987.00
First Mortgage Bonds	$ 3,010,000.00*	3,010,000.00	2,150,000.00
Promissory Note		3,000,000.00	3,000,000.00
The Cincinnati Inter-Terminal Railroad Company			
Preferred Stock	1,030	103,000.00	103,620.00
The Cincinnati Union Terminal Company			
Common Stock	5,000	500,000.00	500,000.00
Advances		103,679.15	103,679.15
Lexington Union Station Company			
Preferred Stock	309	30,900.00	30,900.00
Common Stock	50	5,000.00	Nil
Nicholas, Fayette and Greenbrier Railroad Company			
Common Stock	37,359	3,735,900.00	3,757,461.59
Advances		1,546,550.59	1,546,550.59
Norfolk and Portsmouth Belt Line Railroad Company			
Common Stock	72	7,200.00	7,200.00
Advances		72,500.00	72,500.00
Railway Express Agency, Inc.			
Common Stock	10	No Par	1,000.00
Advances		242,442.17	242,442.17
Rockcastle Railroad Company			
Common Stock	388	38,800.00	38,800.00
Advances		17,143.49	17,143.49

EXHIBIT C-14—Continued

	Number of Shares or Face Value	Par or Face Value	Book Value
The Toledo Terminal Railroad Company			
Common Stock	3,872	387,200.00	1.00
The Belt Railway Company of Chicago			
Common Stock	2,400*	240,000.00	240,000.00
Fruit Growers Express Company			
Common Stock	465	46,500.00	56,161.71
Total			$12,014,446.70
Investments in Subsidiary Non-Carriers—Wholly-Owned:			
Chesapeake Mineral Company			
Common Stock	100*	$ 10,000.00	$ 10,000.00
The Silver Grove Land and Building Company			
Common Stock	1,000	100,000.00	100,000.00
Advances		1,650.00	1,650.00
Western Pocahontas Corporation			
Common Stock	2,500	250,000.00	250,000.00
Promissory Notes		7,250,000.00	7,250,000.00
Western Pocahontas Fuel Company			
Common Stock	10,000	1,000,000.00	1,000,000.00
Coupon Notes		700,000.00	700,000.00
Total			$ 9,311,650.00

* Pledged.

[fol. 119]

EXHIBIT C-14

The Chesapeake and Ohio Railway Company

Securities Owned December 31, 1945—Continued

	Number of Shares or Face Value	Par or Face Value	Book Value
Investments in Listed Securities:			
Erie Railroad Company			
Voting Trust Certificate, Common Stock	46,700	No Par	$ 2,886,031.94
Voting Trust Certificate, Series "A" 5% Preferred Stock	259	$ 25,900.00	26,097.48
General Mortgage Income 4½% Bonds, Series "A"	$ 27,750.00	27,750.00	38,400.12
Pere Marquette Railway Company			
Common Stock	313,900	31,390,000.00	33,464,792.12
Preferred Stock	18,950	1,395,000.00	1,185,175.90
The New York, Chicago and St. Louis Railroad Company			
Common Stock	192,400	19,240,000.00	4,286,610.00
The Wheeling and Lake Erie Railway Company			
Certificate of Deposit, Common Stock	78,145	7,814,500.00	4,168,388.34
Certificate of Deposit, Preferred Stock	1,658	165,800.00	161,406.30
			$46,216,902.20
Less Reserve for Adjustments of Investments in Securities of Erie Railroad Company			2,686,900.79
Total			$43,530,001.41
Miscellaneous Investments:			
First National Bank Building Corporation			
Common Stock	3,185	$ 318,500.00	$ 318,500.00

EXHIBIT C-14—Continued

	Number of Shares or Face Value	Par or Face Value	Book Value
Richmond-Washington Company			
Common Stock	6,674	667,400.00	444,900.00
Standard Carloading Corporation			
Common Stock	450	45,000.00	444,339.99
Promissory Notes		93,000.00	93,000.00
The Railroad Credit Corporation			
Advances		174,746.88	174,746.88
Virginia Hot Springs, Incorporated			
Second Lien Bonds, Series "A"	$ 410,600.00	410,600.00	410,600.00
The Wheeling and Lake Erie Railway Company			
Certificate of Deposit, Prior Lien Stock	115,369	11,536,900.00	11,075,811.00
Other			61,059.16
Total			$13,022,957.03
Grand Total			$77,879,055.14

[fol. 120]

Exhibit C-14

The Chesapeake and Ohio Railway Company

Securities Owned by Wholly-Owned Subsidiaries December 31, 1945

	Number of Shares or Face Value	Par or Face Value	Book Value
Western Pocahontas Corporation:			
Investments in Listed Securities:			
Pere Marquette Railway Company			
Preferred Stock	6,000	$ 600,000.00	$ 240,422.50
The New River Company			
Preferred Stock	21,844	2,184,400.00	2,114,504.80
Common Stock	13,239	1,323,900.00	
Total			2,354,927.30
Miscellaneous Investments:			
The Beachwood Corporation			
Common Stock	500	No Par	$ 60,000.00
First Mortgage 6% Bonds	$ 350,000.00	$ 350,000.00	$ 350,000.00
Demand Note		1,000.00	1,000.00
The Lucas County Railroad Company			
Common Stock	5	No Par	500.00
Demand Notes		32,950.00	32,950.00
The Community Hotel Company			
Common Stock	5	500.00	500.00
Chesapeake Mineral Company			
Advances		44,858.45	44,858.45
Total			$ 489,808.45
Grand Total			$ 2,844,735.75

EXHIBIT C-14—Continued

	Number of Shares or Face Value	Par or Face Value	Book Value
Western Pocahontas Fuel Company:			
Investments in Listed Securities:			
Chicago and Eastern Illinois Railroad Company General Mortgage Income Bonds (Convertible)	$ 175,000.00	$ 175,000.00	$ 42,875.00
The Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company:			
Miscellaneous Investments:			
The Chesapeake and Ohio Railway Company General Mortgage 4½% Bonds	$ 2,075,000.00*	$ 2,075,000.00	$ 2,075,000.00
Greenbrier Railway Company First Mortgage Extended 3½% Bonds	$ 604,000.00*	604,000.00	604,000.00
The Cincinnati Inter-Terminal Railroad Company			
Common Stock	100	10,000.00	1.00
Advances		270,823.70	270,823.70
Total			$ 2,949,824.70

* Pledged.

[fol. 121]

Exhibit C-15

Pere Marquette Railway Company

Securities Owned December 31, 1945

		Number of Shares or Face Value	Par or Face Value	Book Value
Investments in Carrier Companies Directly Connected with the Pere Marquette Railway Operations:				
Flint Belt Railroad Company	Common Stock	10,000*	$ 1,000,000.00	$ 1,000,000.00
	Advances		187,000.00	187,000.00
Manistee and Northeastern Railway Company	Common Stock	8,537*	853,700.00	276,045.81
Railway Express Agency, Incorporated	Common Stock	7*	No Par	700.00
	Advances		169,709.57	169,709.57
The Belt Railway Company of Chicago	Common Stock	2,400*	240,000.00	240,000.00
The Fort Street Union Depot Company	Common Stock	6,765*	676,500.00	566,037.70
The Lake Erie and Detroit River Railway Company	Common Stock	14,000*	1,400,000.00	2,870,000.00
	Promissory Note	$ 3,000,000.00*	3,000,000.00	3,000,000.00
	Advances		3,857,364.13	3,857,364.13**
Fruit Growers Express Company	Common Stock	1,002*	100,200.00	123,103.43
The Toledo Terminal Railroad Company	Common Stock	6,448*	644,800.00	1.00
Total				$12,289,961.64
Investments in Subsidiary Non-Carriers—Wholly-owned:				
The Lake Erie Coal Company, Limited	Common Stock	5,000*	$ 500,000.00	$ 375,000.00
Pere Marquette Radio Corporation	Common Stock	500*	5,000.00	5,000.00
Total				$ 380,000.00

EXHIBIT C-15—Continued

		Number of Shares or Face Value	Par or Face Value	Book Value
Investments in Listed Securities:				
Erie Railroad Company	General Mtge. Income 4½% Bonds, Series "A"	$ 15,000.00	$ 15,000.00	$ 7,725.00
Miscellaneous Investments:				
The Railroad Credit Corporation	Advances		$ 49,524.79	$ 49,524.79
Green Real Estate Company	Common Stock	148,050*	No Par	2,149,099.93
	Advances		216,506.95	216,506.95
Standard Carloading Corporation	Common Stock	450	45,000.00	444,339.99
	Promissory Notes		93,000.00	93,000.00
Other				19,515.71
Total				$ 2,97[illegible]87.37
Grand Total				$15,649,674.01

* Pledged.
** $2,957,526.37 pledged.

[fol. 122]

EXHIBIT C-15

Pere Marquette Railway Company

Securities Owned by Wholly-Owned Subsidiaries December 31, 1945

	Number of Shares or Face Value	Par or Face Value	Book Value
Securities Owned by Wholly-Owned Carrier Subsidiary:			
Schedule A			
Manistee and Northeastern Railway Company:			
Miscellaneous investments:			
Leelanau Transit Company		$ 860.68	$ 860.68
The Railroad Credit Corporation		1,033.97	1,033.97
Manistee Salt Works		1,000.00	1,000.00
Manistee Salt Works		1,000.00	1,000.00
Total			$ 2,894.65

EXHIBIT C-15—Continued

Securities Owned by Wholly-Owned Non-Carrier Subsidiary:
Schedule B

The Lake Erie Coal Company, Limited:				
Investments in Listed Securities:				Book Value Canadian Funds
Dominion of Canada	Victory Loan Bonds, 3%, due June 15, 1951	$ 10,000.00	$ 10,000.00	$ 10,000.00
	Second War Loan Bonds, 3%, due October 1, 1952	50,000.00	50,000.00	49,375.00
	Second Victory Loan Bonds, 3%, due March 1, 1954	25,000.00	25,000.00	25,000.00
	Third Victory Loan Bonds, 3%, due November 1, 1956	25,000.00	25,000.00	25,000.00
	Fourth Victory Loan Bonds, 3%, due May 1, 1957	25,000.00	25,000.00	25,000.00
	Fifth Victory Loan Bonds, 3%, due January 1, 1959	25,000.00	25,000.00	25,000.00
	Sixth Victory Loan Bonds, 3%, due June 1, 1960	15,000.00	15,000.00	15,000.00
	Eighth Victory Loan Bonds, 3%, due October 1, 1963	25,000.00	25,000.00	25,000.00
	Total			$ 199,375.00
Miscellaneous Investments:				
The Lake Erie Navigation Company, Limited, Common Stock		400	$ 40,000.00	$ 1.00
Other				1,389.25
	Total			$ 1,390.25
	Grand Total			$ 200,765.25

[fol. 123]

Exhibit C–16

Market Prices of Stocks of The Chesapeake and Ohio Railway Company and Pere Marquette Railway Company

	Chesapeake Common		Pere Marquette Prior Preference		Pere Marquette Preferred		Pere Marquette Common	
Quarter ended	High	Low	High	Low	High	Low	High	Low
Mar. 31, 1944	48	44 3/8	69	54 1/2	46 7/8	33 3/4	15 3/4	10 1/4
June 30, 1944	46 1/2	44	75	61 1/2	47 7/8	40 1/2	14 3/4	11 3/4
Sept. 30, 1944	47 1/2	45 1/8	88 5/8	71 1/4	59 3/8	42 1/2	17 7/8	13 1/2
Dec. 31, 1944	50 5/8	46	96	76	65 1/4	46 3/4	19 7/8	14
Mar. 31, 1945	54 5/8	47 5/8	106 1/4	92 1/2	90	63	25 3/8	19 1/4
June 30, 1945	53 7/8	49	117 1/2	105 1/4	116 1/2	85 3/4	43 3/8	26 1/8
Sept. 30, 1945	56 1/4	48 3/8	115	102	107 3/4	85 1/2	39 1/2	26 3/8
Dec. 31, 1945	58 5/8	54 5/8	119 3/4	108 7/8	97	89	30 1/2	25 1/2
Month of								
January, 1946	60 1/4	54 7/8	117 1/2	111 3/4	97	88 1/2	36 3/4	26 1/2
February, 1946	63 3/8	55 1/2	120	115	98	91 1/2	32	26 1/4
March 1 to 15, 1946	59 1/4	55 3/4	125	120	98 1/2	96	27 1/2	25

Exhibit C–17

Statement Showing Details of Proposed Issue and Exchange of Capital Stock of The Chesapeake and Ohio Railway Company for Capital Stock of Pere Marquette Railway Company

Pere Marquette	Outstanding Shares		Stock to be Issued by Chesapeake							
			Ratios		Shares		Par Value		Amount	
Prior Preference	Preferred	Common	Preferred	Common	Preferred	Common	Preferred	Common	Preferred	Common
Stock	111,999(1)		1.00	.333	111,999	37,333	$100		$11,199,900	$ 933,325
Preferred Stock	124,288(2)		.80	.40	99,430.4	49,715.2	$100		$ 9,943,040	$ 1,242,880
Common Stock		450,448(3)		.50		225,224		$25		$ 5,630,600
Total Stock to be issued in exchange for stock of Pere Marquette					211,429.4	312,272.2			$21,142,940	$ 7,806,805
Total Stock of Chesapeake presently outstanding		7,657,354(4)				7,657,354				$191,433,850
Par Value of Stock of Chesapeake to be outstanding after proposed merger									$21,142,940	$199,240,655
Total Par Value of Stock of Chesapeake to be outstanding after proposed merger										$220,383,595

(1) Not giving effect to voting trust scrip certificates issued in connection with a prior reorganization representing fractional interests equal to one share.

(2) Not giving effect to voting trust scrip certificates representing fractional interests equal to one share and one share held in the treasury of Pere Marquette.

(3) Not giving effect to voting trust scrip certificates representing fractional interests equal to one share and eleven shares held in the treasury of Pere Marquette.

(4) Not including one share held in treasury and $69.44 scrip presently outstanding.

[fol. 124]

EXHIBIT C–18

Securities of Chesapeake, Pere Marquette, and Alleghany Corporation Beneficially Owned by the Officers and Directors of the Company and of Pere Marquette and by Their Associates

	Chesapeake and Ohio	Pere Marquette Railway Company			Alleghany Corporation		
	Common	Prior Preference	Preferred	Common	Common	Series A Preferred	Prior Preferred
Leonard B. Allen, Vice-President C&O	50	—	—	—	—	—	—
J. Fred Andrews, Comptroller C&O & PM	—	—	—	—	—	—	—
Associate—Note 1	160	—	—	—	—	—	—
Leonard P. Ayres, Director C&O	400	—	—	—	—	10	—
Associate—Notes 2 and 3	—	—	—	—	—	—	—
James G. Blaine, Director C&O	10	—	—	—	—	—	—
Robert J. Bowman, President PM, Director C&O & PM	151	500	700	1,000	—	—	—
Associate	151	—	50	—	—	—	—
Robert J. Bulkley, Director PM	—	—	—	10	—	—	—
Associate	100	—	—	—	—	—	—
James E. Davidson, Director PM	—	—	—	100	—	—	—
John E. Dwyer, Director PM	—	—	—	100	—	—	—
Cyrus S. Eaton, Director C&O	100	—	—	—	—	—	—
Howell B. Erminger, Jr., Director C&O & PM	200	100	50	10	—	—	—
*Associates	32,460	—	—	—	—	—	—
Herbert Fitzpatrick, Director C&O	116	—	—	100	—	—	—
Harvey D. Gibson, Director C&O	100	—	—	—	—	—	—
Associate	5,500	—	—	—	—	—	—
John L. Giles, Director PM	—	—	—	25	—	—	—
Henry J. Guild, Director C&O	5	—	—	—	100	—	—
Allan P. Kirby, Director C&O	100	10	—	—	500,000	39,158	—
Associates—Note 2	7,600	—	—	—	—	—	—
William H. Lipscomb, Director C&O	100	—	—	—	—	—	—
Henry F. Lohmeyer, Secretary and Treasurer C&O & PM	244	20	25	—	—	—	—
Associate	29	—	—	—	—	—	—
Wilbur C. Manning, Director PM	—	10	1	—	—	—	—
Ross S. Marshall, Vice-President C&O & PM, Director PM	100	—	—	100	—	—	—
Associate	100	—	—	—	—	—	—
Walter S. McLucas, Director PM	—	10	—	—	—	—	—
James D. Miller, Director PM	—	—	—	100	—	—	—
Associates	150	—	—	—	—	—	—

EXHIBIT C-18—Continued

Securities of Chesapeake, Pere Marquette, and Alleghany Corporation Beneficially Owned by the Officers and Directors of the Company and of Pere Marquette and by Their Associates

	Chesapeake and Ohio	Pere Marquette Railway Company			Alleghany Corporation		
	Common	Prior Preference	Preferred	Common	Common	Series A Preferred	Prior Preferred
Otto Miller, Director PM	—	—	—	10	—	—	—
Associates	900	—	—	—	—	—	—
Carl E. Newton, President and Director C&O	10	—	—	—	—	—	—
John J. O'Laughlin, Director PM	—	10	—	—	—	100	—
John B. Parrish, Vice-President C&O	300	—	—	—	—	—	
Associate	100	—	—	—	—		—
Robert W. Purcell, Vice-President and Director C&O—Note 2	10	—	—	—	1,100	900	—
DeGrimm Renfrew, Director PM	—	—	—	10	—	—	—
H. Dudley Swim, Director PM	—	100	300	—	—	100	—
Associate	—	—	—	—	1,000	—	—
Edward M. Thomas, Vice-President C&O & PM	—	—	—	—	—	—	—
Associate	150	—	—	—	—	—	—
Harry C. Thompson, Director C&O	10	—	—	—	—	—	—
Associate	30	—	—	—	100	—	—
Walter J. Tuohy, Vice-President C&O	—	—	—	—	—	—	—
Associate	—	—	—	—	—	100	—
Andrew Van Pelt, Director C&O	250	—	—	—	—	800	—
Associate	—	—	—	—	—	1,000	—
Robert R. Young, Chairman of Board and Director C&O—Note 2	110	—	—	—	47,106	5,983	6,200
Associate	—	—	—	—	—	2,700	—

* In addition, Mr. Erminger is agent for the Executive Committee of a trust owning 3,000 shares of Chesapeake and Ohio common stock and is attorney-in-fact for persons owning 27,075 shares of Chesapeake and Ohio common stock.

NOTE. 1—The associate of Mr. Andrews holds $5,000 principal amount Pere Marquette Railway Company First Mortgage 3⅜ Per Cent. Bonds, Series D.

NOTE 2—In addition to the holdings listed above, Alleghany Corporation, an associate of Messrs. Ayres, Kirby, Purcell, and Young, beneficially owned 606,634 shares of the common stock of the Chesapeake and Ohio, as explained in the text.

NOTE 3—The Associate of Mr. Ayres holds $500,000 principal amount of The Chesapeake and Ohio Railway Company Refunding and Improvement Mortgage Bonds, consisting of $100,000 each of Series G-6, Series G-7, Series G-8, Series G-9, and Series G-10.

[fol. 126] EXHIBIT D

Excerpts from Sections 3822-a and 3822-b of the Code of Virginia of 1919, as Amended

Sec. 3822-a. Remedy of Dissatisfied Stockholders.—(a) If any stockholder of either of the corporations so consolidated or merged who has not given assent thereto and who is dissatisfied therewith, signifies his dissent by notice in writing served on the president, secretary or treasurer, either within or without this State, of the consolidated or merged corporation, or on the statutory agent thereof, if such agent has been appointed, at any time within three months after the date of the meeting of his corporation to act on the consolidation or merger agreement, he shall be entitled to receive from the consolidated or merged corporation the fair cash value of his stock as of the day before the vote for the agreement of consolidation or merger of his corporation was so cast as aforesaid, which fair cash value if not agreed on between the dissenting stockholder and the consolidated or merged corporation shall be determined in the manner hereinafter provided; and if any stockholder who has not given assent thereto fails to signify his dissent by notice in writing served upon the consolidated or merged corporation in the manner hereinafter directed within three months after the date of the meeting of his corporation, he shall be forever precluded from objecting to the consolidation or merger and shall be deemed to have elected thereby to participate in the agreement or plan of consolidation or merger on the basis therein provided for stockholders of his class, and such stockholder shall not thereafter be entitled to demand or receive the fair cash value of his stock in his corporation, but his rights shall thereafter be confined to participation in the agreement or plan of consolidation or merger, and to the stock of the consolidated or merged corporation to which he is entitled, and all of his rights under the stock of his consolidating or merging corporation shall thereupon cease and determine.

(b) If such dissenting stockholder and the merged or consolidated corporation do not, within one month from the date of the service of the notice by him upon the merged or consolidated corporation, agree upon the fair cash value of his stock as of the day before the vote for the agreement

of consolidation or merger was cast, he may, upon reasonable notice to the consolidated or merged corporation given in the manner in which the notice of his dissent is hereinbefore directed to be given, apply to the circuit court of the county or the circuit or corporation court of the city wherein the principal office of the corporation of the dissenting stockholder is located, or to the judge thereof in vacation, or to the chancery court of the city of Richmond, or to the judge in vacation, in the event the principal office of his corporation is located in the city of Richmond, to have the fair cash value of his stock, as of the date aforesaid, appraised by three disinterested persons, residents of this State, appointed by the court; or the consolidated or merged corporation may likewise, upon reasonable notice to such dissenting stockholder, either served upon him personally or sent to him by registered mail at his last known postoffice address, as same appears on the books of the corporation, apply to such court or the judge in vacation to have the fair cash value of the stock of the dissenting stockholder, as of the date aforesaid, appraised by three disinterested persons, residents of this State, appointed by the court; and it shall be the duty of the court, or judge in vacation, to appoint the appraisers on reasonable notice, on the application of either party; provided that if notice of the consolidated or merged corporation to apply to the court for the appointment of appraisers is not served upon such stockholder within this State, and if such stockholder does not appear before the court on the day fixed in the notice the petition or application of the consolidated or merged corporation for the appointment of appraisers to appraise and determine the fair cash value of the stock shall be continued to such time as the court designates, and an order of publication shall be entered against him requiring him to appear before the court or the judge in vacation at such time and place as designated in the order, which order shall be published once a week for two successive weeks in a newspaper published or having a general circulation in the county or city in which the proceeding is pending; and upon the day fixed in the order, or at any subsequent time to which the matter is continued, whether the stockholder has appeared or not, the court shall appoint three disinterested persons, residents of this State, to appear and determine the fair cash value of the stock.

(c) The appraisers so appointed shall investigate the condition of the corporation of the dissenting stockholder, and report to the court or to the judge in vacation as promptly as possible the fair cash value of the stock of [fol. 127] the dissenting stockholder as of the day before the vote for the agreement of consolidation or merger of his corporation was so cast as aforesaid, and the appraisers shall have the right to administer oaths and to take such evidence as is necessary in determining the value of the stock, and may conduct their proceedings either within or without the State of Virginia; provided that the appraisers shall give notice of the time and place of their first meeting to the dissenting stockholder and to the consolidated or merged corporation at their last known postoffice address, by registered mail at least ten days before the date of the meeting, and thereafter no notice of adjournment, if any, either from time to time, or from place to place, to either party shall be necessary. The court in which such proceedings are pending, or the judge in vacation, may order production before the appraisers at such time and place as specified of all such books and accounts and other records of the corporation of the dissatisfied stockholder, or of the consolidated or merged corporation, as necessary or desirable in determining the value. The finding of a majority of the appraisers shall stand as the action of the appraisers. The appraisers shall make their report to the court or to the judge in vacation, in writing, and shall return with their report such evidence as they have taken during their investigation.

(d) If such stockholder, or the consolidated or merged corporation, be dissatisfied with the fair cash value as determined by the appraisers, he or it, as the case may be, may, within thirty days from the date the report of the appraisers is filed in court, or with the judge in vacation, and upon reasonable notice to the other party given in the manner hereinbefore provided, except that no further order of publication shall be necessary as to such dissenting stockholder, apply to the court or the judge in vacation to set aside the finding of the appraisers; and the court or judge if of the opinion that the valuation is just shall deny the application and, after thirty days from the date the report of the appraisers was filed, shall confirm same and the amount

thereof, but if the court or judge be of opinion that the valuation is not just, the report and the amount thereof shall be set aside, and when set aside the court or judge shall proceed to ascertain the fair cash value of the stock of such stockholder, as of the day aforesaid, and shall enter judgment against the consolidated or merged corporation accordingly, which judgment may be collected as other judgments of a court of competent jurisdiction are collectible, and its finding and judgment shall be final and conclusive upon all parties to the proceedings; and if no such application is made within thirty days after the report is filed, the court or judge shall immediately confirm the report, and the amount thereof shall be final and conclusive upon all parties to the proceeding. In any case in which the report of the appraisers is confirmed as hereinbefore directed the amount thereof shall immediately become and be a final judgment of the court against the consolidated or merged corporation and may be collected as other judgments of a court of competent jurisdiction are by law collectible.

(e) Upon payment or tender of payment by the consolidated or merged corporation of the value of the stock so ascertained, the dissenting stockholder shall deliver up his certificate of stock to the consolidated or merged corporation, if any has been issued, and if none has been issued shall make a due assignment to the consolidated or merged corporation of all his rights in respect thereto and shall mark the judgment satisfied, and the consolidated or merged corporation may thereafter issue and dispose of the stock to which the dissenting stockholder would have been entitled under the agreement of consolidation or merger had he not dissented therefrom; and if the dissenting stockholder refuses to receive the value so ascertained when payment is tendered to him or refuses or fails to surrender and deliver up his certificate of stock upon the tender of payment, or refuses or fails to mark the judgment satisfied, the consolidated or merged corporation shall have the right to deposit to the credit of the court in which the proceeding is pending the value of the stock so ascertained and determined, and the court or judge shall enter an order reciting the deposit and declaring the judgment satisfied and discharging the consolidated or merged corporation from any or all further liability thereunder, and shall direct

the clerk of the court to mark the judgment satisfied. Thereafter the rights of the stockholder under his stock in the consolidating or merging corporation shall cease and determine and his sole right shall be to receive the cash so deposited upon surrender to the consolidated or merged corporation of the certificate or certificates representing same if any were issued to him, and the consolidated or merged corporation may issue and dispose of the stock to which the dissenting stockholder would have been entitled under the agreement of consolidation or merger had he not dissented therefrom.

[fol. 128] (f) The court or judge may in the same proceeding, upon application of the consolidated or merged corporation, enjoin the sale, negotiation or other disposition of the stock certificate or certificates held by the stockholder and may compel their surrender by him with appropriate endorsement to the consolidated or merged corporation.

(g) The appraisers appointed pursuant to this section shall receive such compensation as is allowed to them by the court in the order making the appointments and their reasonable expenses incurred in connection with their investigation, to be paid by the consolidated or merged corporation.

(h) In all cases when statutes of this State now in force and effect authorize the union or consolidation and merger of the stock, property and franchises of any corporation of this or any other State with and into the stock, property and franchises of any other corporation or corporations of this or any other State, and provide that such union or consolidation and merger shall be taken and deemed complete so soon as the agreement thereof is filed in the office of the board of public works, such agreement shall be filed in the office of the Commission, and when so filed shall have the same force and effect as if same had been filed in the office of the board of public works. (1902-3-4, p. 437, ch. 5, sec. 41; 1922, p. 625; 1944, p. 529.)

Section 3822-b. Filing Agreement after three months from meeting.—An agreement of merger or consolidation may provide that notice of dissent by any stockholder shall

be served on the president, secretary or treasurer, either within or without the State, of his corporation, or on the statutory agent thereof, if such agent has been appointed, at any time within three months after the date of the meeting of the stockholders of his corporation to act on the agreement, without awaiting the consummation of the merger or consolidation. In such case notices of dissent shall be so served and when so served shall be valid for all purposes and the boards of directors of the several corporations need not present the agreement to the Commission until the expiration of the period for dissent provided in Section 3822-a and such boards of directors may be authorized by the stockholders to terminate the agreement in lieu of presenting it to the Commission if of the opinion that the merger or consolidation is, in all the circumstances, including the dissents, impracticable or undesirable.

[fol. 129] IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO INTERVENE AND NOTICE OF MOTION—Filed in Open Court June 4, 1947

The Chesapeake and Ohio Railway Company, a Virginia corporation, Pere Marquette Railway Company, a Michigan corporation, and Alleghany Corporation, a Maryland corporation, hereby move the Court for leave to intervene as Defendants in this action in opposition to the relief sought in the Petition and at the same time to file the attached Motion to Dismiss the action. Said Companies were parties in interest to the proceeding before the Commission in which the order referred to in the Petition was made; their interest is involved in this proceeding; and they are entitled to appear as parties hereto on their own motion and as of right pursuant to Sections 212 and 213 of the Judicial Code, as amended (28 U.S.C., Section 45a).

Dated at Richmond, Virginia, June 3, 1947.

R. W. Purcell, J. C. Kauffman, R. F. Maskey, Geo. H. Gardner, George D. Gibson (S.), John W. Riely, Attorneys for The Chesapeake and Ohio Railway Company and Alleghany Corporation; John C. Shields, Glenn C. Wilber, George D. Gibson (S.), Attorneys for Pere Marquette Railway Company.

Hunton, Williams, Anderson, Gay & Moore, Electric Building, Richmond 12, Virginia. Of Counsel.

[fol. 130] To The Attorney General of the United States, Washington, D. C.; Interstate Commerce Commission, Washington, D. C.; Oscar L. Shewmake, 1203 State-Planters Bank Building, Richmond 19, Virginia; Robert N. Cooper, 1302 18th St. N.W., Washington 6, D.C. *Counsel for Plaintiffs.*

Please Take Notice that The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation will bring the foregoing Motion for Leave to Intervene in this proceeding and the Motion to Dismiss which is thereto attached on for hearing before the District Court of the United States for the Eastern District of Virginia, Richmond Division, at the court room in the Post Office Building in Alexandria, Virginia, on the 4th

day of June, 1947, at 2:30 o'clock in the afternoon or as soon thereafter as counsel may be heard.

Dated at Richmond, Virginia, this 3rd day of June, 1947.

(S) George D. Gibson, Attorney for The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation.

Hunton, Williams, Anderson, Gay & Moore, Electric Building, Richmond 12, Virginia.

[fol. 131] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed in open Court June 4, 1947

The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation move the Court to dismiss the action because the Petition fails to state a claim upon which relief can be granted and because the action of the Interstate Commerce Commission complained of in the Petition is within its powers, is based on substantial evidence and is in accord with legal powers, is based on substantial evidence and is in accord with legal standards and is therefore conclusive.

Dated at Richmond, Virginia, June 3, 1947.

R. W. Purcell, J. C. Kauffman, R. F. Maskey, Geo. H. Gardner, George D. Gibson (S.) George D. Gibson, John W. Riely, Attorneys for The Chesapeake and Ohio Railway Company and Alleghany Corporation.

John C. Shields, Glenn C. Wilber, George D. Gibson (S.) George D. Gibson, Attorneys for Pere Marquette Railway Company.

Hunton, Williams, Anderson, Gay & Moore, Electric Building, Richmond 12, Virginia; of Counsel.

[fol. 132] IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO INTERVENE—Entered and Filed June 4, 1947

[Title omitted]

The motion of The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation for leave to intervene as parties defendant in this proceeding having come on this day for hearing; and it appearing to the Court that The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation were parties in interest to the proceeding before the Commission in which the order referred to in the petition herein was made and their interest is involved in this proceeding and that they are therefore entitled to appear as parties hereto on their own motion and as of right, pursuant to Sections 212 and 213 of the Judicial Code, as amended (28 U. S. C., Section 45a); and the Court being fully advised in the premises;

It Is Ordered that the motion of The Chesapeake and Ohio Railway Company, Pere Marquette Railway Company and Alleghany Corporation for leave to intervene in this proceeding be, and it hereby is, granted, and they are hereby made parties defendant to this proceeding, and are hereby granted leave to file their Motion to Dismiss.

(Sgd.) Armistead M. Dobie, U. S. Circuit Judge.

Dated: June 4, 1947.

[fol. 133] IN UNITED STATES DISTRICT COURT

MOTION OF HERBERT G. WELLINGTON, ET. AL., FOR LEAVE TO INTERVENE—Filed in Open Court June 4, 1947

Come now Herbert G. Wellington, Raymond B. Haynes and Herbert G. Wellington, Jr., a co-partnership, doing business as Wellington & Company, of 120 Broadway, New York City; Louis F. Rothschild, Leonard A. Hockstader, Charles Newwirth, Henry C. Schreier, Willard E. Loeb, Henry L. Heming, Albert F. Hockstader, Paul M. Kaufmann, Henry A. Cohn, Eugene Treuhold, Henry J. Dietrich,

and Thomas H. Hockstader, a co-partnership, doing business as L. F. Rothschild & Company, of 120 Broadway, New York City; Herbert Salomon, Percy F. Salomon, B. J. Levy, Rudolph Smutny, Edward L. Holsten, H. I. Losee, Betram F. Brummer, Jonas H. Ottens, Franklin J. Grieder, James H. Carson, L. Eugene Marx, Myles D. Perrin, Theodore A. Von Glahn, Henry S. Ludeman, Girard L. Spencer, William R. Salomon, Maurice Levy, Leo G. Shaw, and Charles J. Simon, a co-partnership, doing business as Salomon Brothers and Hutzler, of 60 Wall Street, New York City; Nicholas J. Gerold, Bernard E. Pollak, Cornelius R. Love, Jr., Audrey Josephthal Love, Andrew Baird, Edward A. Rosenthal, James S. Wilson, and Mortimer J. Gartman, a co-partnership, doing business as Josephthal & Company, of 120 Broadway, New York City; Walter E. Sachs, Henry S. Bowers, Howard J. Sachs, Sidney J. Weinberg, Ernest [fol. 134] Loveman, Miles J. Cruickshank, Robert V. Horton, Alfred E. Hammill, James C. Hemphill, Walter F. Blaine, T. Spencer Shore, Gustave L. Levy, and Walter J. Creely, a co-partnership, doing business as Goldman, Sachs & Co., of 30 Pine Street, New York City; and Blyth & Co., Inc., a corporation of New York, of 14 Wall Street, New York City, and move for leave to intervene as defendants in this action in order to assert the defenses set forth in their proposed answer, a copy of which is attached hereto, on the following grounds:

I

That this is an action to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission made in a proceeding before said Commission upon the application of the Chesapeake & Ohio Railway Company, the Pere Marquette Railway Company, and the Alleghany Corporation for authorization and approval under the Interstate Commerce Act, as amended, of a transaction for the merger of the properties and franchises of the Pere Marquette Railway Company into the Chesapeake & Ohio Railway Company for ownership, management and operation. Said suit involves the validity of said order. Your petitioners respectfully represent that, respectively, they are the owners of the shares of preferred and common stock of the Pere Marquette Railway Company as set out below, and as such owners, have assented to the

proposed merger of the properties of the said Railway Company pursuant to the terms and conditions of said order:

	5% Cumulative Prior Preference	5% Cumulative Preferred	Common
Wellington & Company	675	5,250	1,000
L. F. Rothschild & Company	100	1,400	
Salomon Bros. & Hutzler	705	5,460	1,000
Josephthal & Company	100	1,400	
Goldman, Sachs & Co.	1,200	1,900	200
Blyth & Co., Inc.	500	7,200	
Total	3,280	22,610	2,200

[fol. 135] Your petitioners further represent that under the terms of the agreement therefor, the merger of the property will be consummated on June 5, 1947, on which date, pursuant to the terms of said order, they will be entitled to receive certain shares of the preferred and common stock of the Chesapeake & Ohio Railway Company, and particularly 11,237 shares of the common stock of the said last named Railway Company; that such Chesapeake & Ohio Railway Company has declared and is obligated to pay and will pay, on June 6, 1947, to the stockholders of record on that date, a dividend of 75 cents upon each and every share of said common stock of the said Chesapeake & Ohio Railway Company, including the said 11,237 shares of such common stock to be received by your petitioners in exchange for their present shares of preferred and common stock of the Pere Marquette Railway Company. The dividends upon said common stock of the Chesapeake & Ohio Railway Company payable to your petitioners amount to $8,427.75, and to all present holders of preferred and common stocks of the Pere Marquette Railway Company, to $234,209.25.

Your petitioners further aver that if said order of the Interstate Commerce Commission is temporarily enjoined and thereby the consummation of the merger therein authorized enjoined, your petitioners and other holders of the preferred and common stocks of the Pere Marquette Railway Company, assenting to said merger, will be irreparably injured in that they will be deprived, permanently, of the dividends declared and to be paid to stockholders of record of the Chesapeake & Ohio Railway Company on June 6, 1947, upon common stock of that company

receivable for such stocks of the Pere Marquette Railway Company.

[fol. 136] II

This petition to intervene is made as a matter of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, and Section 45(a) of Title 28 of the United States Code.

John R. Turney, Attorney for Petitioners-Interveners, Office and Post Office Address: 1001 Fifteenth Street, Northwest, Washington 5, D. C.

Duly sworn to by Lester S. Greenwald, jurat omitted in printing.

[fol. 137] NOTICE OF MOTION

To: Oscar L. Shewmake, Esq., and Rupert M. Cooper, Attorneys for Plaintiffs; Tom C. Clark, Esq., United States Attorney General; David Kunkel, Esq., Attorney for Interstate Commerce Commission.

Please Take Notice, That the undersigned will bring the above motion on for hearing before this Court in the United States Court House at Alexandria, Virginia, on the 4th day of June, 1947, at 2:30 P. M., Eastern Standard Time, or as soon thereafter as counsel can be heard.

Dated: June 4, 1947.

John R. Turney, Attorney for Petitioners-Interveners, Office and Post Office Address: 1001 Fifteenth Street, Northwest, Washington 5, D. C.

[fol. 138] IN UNITED STATES DISTRICT COURT

ANSWER OF HERBERT G. WELLINGTON, et al.—Filed in Open Court June 4, 1947

Come now defendants and interveners, Herbert G. Wellington, Raymond B. Haynes and Herbert G. Wellington, Jr., a co-partnership, doing business as Wellington & Company, of 120 Broadway, New York City; Louis F. Rothschild, Leonard A. Hockstader, Charles Newwirth, Henry C. Schreier, Willard E. Loeb, Henry L. Heming, Albert F. Hockstader, Paul M. Kaufmann, Henry A. Cohn, Eugene

Treuhold, Henry J. Dietrich, and Thomas H. Hockstader, a co-partnership, doing business as L. F. Rothschild & Company, of 120 Broadway, New York City; Herbert Salomon, Percy F. Salomon, B. J. Levy, Rudolph Smutny, Edward L. Holsten, H. I. Losee, Bertram F. Brummer, Jonas H. Ottens, Franklin J. Grieder, James H. Carson, L. Eugene Marx, Myles D. Perrin, Theodore A. Von Glahn, Henry S. Ludeman, Girard L. Spencer, William R. Saloman, Maurice Levy, Leo G. Shaw, and Charles J. Simon, a co-partnership, doing business as Salomon Brothers and Hutzler, of 60 Wall Street, New York City; Nicholas J. Gerold, Bernard E. Pollak, Cornelius R. Love, Jr., Audrey Josephthal Love, Andrew Baird, Edward A. Rosenthal, James S. Wilson, and Mortimer J. Gartman, a co-partnership, doing business as Josephthal & Company, of 120 Broadway, New York City; Walter E. Sachs, Henry S. Bowers, Howard J. Sachs, [fol. 139] Sidney J. Weinberg, Ernest Loveman, Miles J. Cruickshank, Robert V. Horton, Alfred E. Hammill, James C. Hemphill, Walter F. Blaine, T. Spencer Shore, Gustave L. Levy, and Walter J. Creely, a co-partnership, doing business as Goldman, Sachs & Company, of 30 Pine Street, New York City; and Blyth & Co., Inc., a corporation of New York, of 14 Wall Street, New York City; and for their joint and several answer to said complaint:

I

Defendant-Interveners deny:

1. The allegations of sub-paragraph 4 of paragraph II of the complaint that in the report of the Interstate Commerce Commission, the rights of dissenting stockholders were ignored or that no conditions were attached to the approval requiring applicants to protect the rights of plaintiffs or others in the same position;

2. The allegations of sub-paragraph 6 of paragraph II, that (a) failure to include protection for plaintiffs, as dissenting stockholders as a distinct class created by the merger, is contrary to law or in violation of the Commission's duty to impose just and reasonable conditions for the protection of all interests concerned; or (b) the Commission, in this or in any other regard, has departed from any past practice of requiring that merger agreements contain

either provisions for the protection of dissenting shareholders or conditions approved for a similar purpose; or (c) the decision and order of the Commission affords no affirmative protection; or (d) the decision relegates plaintiffs, as dissenting shareholders, to negotiation and litigation in the courts; or (e) the decision and order of the Commission or any action taken by the Commission or to be taken pursuant to such decision and order is without warrant of law;

[fol. 140] 3. The allegations of sub-paragraph 7 of paragraph II, that (a) plaintiffs have suffered or will suffer substantial or irreparable damage by reason of the failure of the Commission to recognize and protect their rights under the Interstate Commerce Act, as amended; or (b) there has been or is any failure of the Commission to recognize and protect such rights; or (c) the Commission refuses to require applicants to offer plaintiffs any protection or fails to condition its approval of the merger agreement upon a protection of plaintiffs' rights; or (d) the plaintiffs are without remedy unless this Court grant the relief sought;

4. The allegations of paragraph III that (a) plaintiffs will suffer irreparable or other damage either in connection with the Commission or will lose any remedy provided under the Interstate Commerce Act, as amended, unless this Court, by temporary stay or suspension of the order of the Commission, enjoin or restrain the enforcement of such order pending final determination of this action; or (b) any right of plaintiffs will be lost unless this Court enjoin or suspend or stay the order of the Commission; or (c) once the merger agreement has been consummated, this Court will be powerless to correct any unlawful action on the part of the Commission.

II

For further answer, Defendant-Interveners show the Court that:

1. They are owners of the shares of preferred and common stock of the Pere Marquette Railway Company, and as such owners, have assented to the proposed merger of

the properties of the said Railway Company pursuant to the terms and conditions of said order, as follows:

	5% Cumulative Prior Preference	5% Cumulative Preferred	Common
Wellington & Company	675	5,250	1,000
L. F. Rothschild & Company	100	1,400	
Salomon Bros. & Hutzler	705	5,460	1,000
Josephthal & Company	100	1,400	
Goldman, Sachs & Co.	1,200	1,900	200
Blyth & Co., Inc.	500	7,200	
Total	3,280	22,610	2,200

[fol. 141] 2. Under the terms of the agreement therefor, the merger of the properties will be consummated on June 5, 1947, on which date, pursuant to the terms of said order, they will be entitled to receive, in exchange for their above shares of Pere Marquette Railway Company stock, certain shares of the preferred and common stock of the Chesapeake & Ohio Railway Company, including 11,237 shares of the common stock of the said last named Railway Company; such Chesapeake & Ohio Railway Company has declared and is obligated to pay and will pay, on June 6, 1947, to stockholders of record on that date, a dividend of 75 cents upon each and every share of said common stock of the said Chesapeake & Ohio Railway Company, including the said 11,237 shares of such common stock to be so received by your Defendant-Interveners;

3. The dividends upon said common stock of the Chesapeake & Ohio Railway Company, which are payable to your Defendant-Interveners, amount to $8,427.75, and the dividends payable to all present holders of preferred and common stocks of the Pere Marquette Railway Company aggregate $234,209.25;

4. If said order of the Interstate Commerce Commission is enjoined, stayed or suspended, and thereby consummation of the merger therein authorized delayed, your Defendant-Interveners and other holders of the preferred and common stocks of the Pere Marquette Railway Company, assenting to the said merger, will be irreparably injured in that they will be deprived, permanently, of the dividends declared and to be paid to stockholders of record of the Chesapeake & Ohio Railway Company on June 6, 1947,

upon common stock of that company receivable for such stocks of the Pere Marquette Railway Company, in amounts as aforesaid.

[fol. 142] Wherefore, Defendant-Interveners pray that the complaint herein be dismissed for want of equity and the prayer for injunction or stay or postponement of the Commission's order be denied; or in the alternative, that as a condition of the issuance of any injunction, stay or restraining order enjoining or preventing consummation of said merger on June 5, 1947, that Plaintiffs be required to make and file with the Court a bond with good and sufficient security, in an amount of not less than Two Hundred and Fifty Thousand Dollars ($250,000), conditioned to pay all damage suffered by the Defendant-Interveners and any and all other holders of preferred or common stocks of the Pere Marquette Railway Company by reason of the issuance of said injunction, stay or postponement; and for such other and further relief as they may be entitled in the premises.

Dated this 4th day of June, 1947.

John R. Turney, Attorney for Defendant-Interveners, Office and Post Office Address: 1001 Fifteenth Street, N. W., Washington 5, D. C.

[fol. 143] *Duly sworn to by Lester S. Greenwald, jurat omitted in printing.*

[fol. 144] In United States District Court

Motion to Intervene—Filed June 4, 1947

Your petitioners (1) Sterling Grace & Company, New York, N. Y., in behalf of themselves and their customers and clients owning 3,585 shares of common stock, 10,285 shares of preferred stock and 2,205 shares of prior preferred stock of the Pere Marquette Railway Company; (2) The Connecticut Mutual Life Insurance Company, Hartford, Connecticut, owning 5,000 shares of prior preferred stock, and (3) Keystone Custodian Funds, owning 5,500 shares of prior preferred stock and 830 shares of preferred, move for leave to intervene as defendants in this action in order to assert the defenses set forth in their proposed motion, a copy of which is hereto attached, on the ground that they are independent stockholders of the Pere Marquette Rail-

way Company, and as such have a defense to plaintiff's claim presenting both questions of law and fact common to the main action. In further support of said motion, your petitioners respectfully say:

Petitioners as independent stockholders of the Pere Marquette Railway have a vital interest in the early consummation of the merger approved and authorized by the Interstate Commerce Commission in its Report and Order of April 1, 1947, in Finance Docket No. 15288, of the properties and franchises of the Pere Marquette Railway Company into the Chesapeake and Ohio Railway Company for ownership, management and operation, on terms which are just and reasonable.

Wherefore, said petitioners pray leave to intervene and be treated as parties hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person, or by counsel upon brief and at the oral argument, if oral argument is granted.

[fol. 145] Dated at Washington, D. C., this 4th day of June, 1947.

Respectfully submitted, (Sgd.) Moultrie Hitt, Attorney for Sterling Grace & Company, Connecticut Mutual Life Insurance Co., Keystone Custodian Funds.

[fol. 146] In United States District Court

Motion to Dismiss—Filed June 4, 1947

(1) Sterling Grace Company, (2) Connecticut Mutual Life Insurance Company, (3) Keystone Custodian Funds, independent shareholders of the Pere Marquette Railway Company, respectfully move the Court to dismiss this action because (1) terms and conditions of the Report and Order of the Interstate Commerce Commission of April 1, 1947, entitled "Finance Docket No. 15228, Pere Marquette Railway Company Merger, etc." are just and reasonable and fair to the stockholders of the Pere Marquette Railway Company; and (2) the petition of complainants fails to state a claim upon which relief can be granted; and (3) the action of the Interstate Commerce Commission complained

of is within the lawful powers of the Commission, is amply supported by substantial evidence and is in accord with legal standards.

Dated at Washington, D. C., this 4th day of June, 1947.

Respectfully submitted, (Sgd.) Moultrie Hitt, Attorney for Sterling Grace Company, Connecticut Mutual Life Insurance Co., Keystone Custodian Funds, 537 Woodward Building, Washington 5, D. C.

[fols. 147-150] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING STERLING GRACE & CO., ET AL., TO INTERVENE —Entered & Filed June 4, 1947

[Title omitted]

The motion of Sterling Grace & Company, Connecticut Mutual Life Insurance Company and Keystone Custodian Funds, for leave to intervene, as parties defendant in this proceeding having come on this day for hearing; and it appearing to the Court that a proper interest of said petitioners is involved in this proceeding;

It Is Ordered that the motion of Sterling Grace & Company, Connecticut Mutual Life Insurance Company and Keystone Custodian Funds for leave to intervene in this proceeding be, and hereby is, granted, and they are made parties defendant to this proceeding, and are hereby granted leave to file their motion to dismiss.

(Sgd.) Armistead M. Dobie, United States Circuit Judge.

Alexandria, Virginia, June 4th, 1947.

[fol. 151] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 713

ALBERT E. SCHWABACHER, and others,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Reporter's Transcript of Proceedings

Before Honorable Armistead M. Dobie, United States Circuit Judge; Honorable Sterling Hutcheson, United States District Judge; Honorable A. D. Barksdale, United States District Judge

Alexandria, Virginia,
June 4, 1947.

Present: William M. Blackwell, Esq.; Robert M. Cooper, Esq.; Ashley Sellers, Esq., Counsel for the complainants; George R. Humrickhouse, Esq., Assistant United States Attorney; Edward J. Hickey, Jr., Esq., Special Assistant to the Attorney General, for the United States of America; Daniel H. Kunkel, Esq., Attorney for Interstate Commerce [fol. 152] Commission; J. C. Kauffman, Esq.; George H. Gardner, Esq.; George D. Gibson, Esq.; John H. Riely, Esq.; Counsel for The Chesapeake & Ohio Railway Company and Allegheny Corporation; John C. Shields, Esq.; George D. Gibson, Esq., Counsel for Pere Marquette Railway Co.; John R. Turney, Esq.; Moultrie Hitt, Esq., Counsel for intervening stockholders.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gibson: May it please the Court, the applicants in this proceeding before the Commission were the Chesapeake & Ohio Railway Company, Pere Marquette Railway Company and Allegheny Corporation and in that capacity they have a statutory right to intervene in this proceeding. We respectfully ask leave to do so and we wish to file a motion to dismiss the petition herein. Copies have been served on opposing counsel.

I would also like to submit a proposed order.

The Court (Judge Dobie): Your motion to dismiss—is that on the merits? Is there any question of notice?

Mr. Gibson: The ground of the motion is, in substance, that there is no warrant in law for the action.

The Court (Judge Dobie): You gentlemen know that there is a provision for three days' notice before the temporary stay can be granted and five days' notice before any order can be entered on the merits. Are you gentlemen [fol. 153] willing to waive that notice?

Mr. Gibson: For the C. & O., Pere Marquette and Allegheny, we are. Of course there are other parties.

Mr. Hickey: Your Honors, speaking for the United States, we are willing to waive the notice if the Court does not regard the wording of Section 47 of 28 U. S. C. A. as going to its jurisdiction. It could be construed that way.

The Court (Judge Dobie): Do you know of any cases on that? I have sat in quite a number of these cases and I have never had any question of waiver. The statute is quite precise and, as you know, it prescribes in great detail and in connection with granting a temporary stay, if that is done, you have to make a special finding of irrevocable damage and there has to be some incorporation by reference in connection with the evidence. So the statute is pretty strict. I understand the three-day notice has not been given?

Mr. Gibson: It would expire tomorrow morning, I believe. The issu is a very narrow one.

Mr. Hickey: That is correct; it will expire tomorrow morning.

The Court (Judge Dobie): The order goes into effect tomorrow morning?

Mr. Gibson: The order is now in effect, at 12:01 this morning but no action has been taken under it.

The Court (Judge Dobie): I gathered from the petition [fol. 154] that it went into effect on June 5th.

Mr. Gibson: Fifteen days from May 20th and we believe it became in operation the first minute of today.

Mr. Hickey: Your Honors, may I say that we feel, in fairness to the Court, that the design of the statute is to prevent the United States and the Interstate Commerce Commission from being taken by surprise. We claim no such situation in this case and we are willing to waive the matter of notice if the Court is willing.

The Court (Judge Dobie): Let me ask you one more question before we talk about time. Is it possible today to go into this thing on the merits as well? In other words, we would like to avoid taking two bites at this cherry if we can clean it up today. On the other hand, I appreciate that it is a matter of considerable importance—two great railroads, the public, and a large number of stockholders—and, of course, if it is impossible to go into anything except a motion for temporary setting aside, I suppose that is all we can do.

Mr. Hickey: Your Honors, we feel that the question raised by the pleadings in this case in connection with the propriety of granting the stay will also be determinative of the merits of this case. The same argument would apply to both and we feel that there is a distinct possibility that if the Court agrees with the argument which we have to submit later, after the plaintiff has stated its case, there will [fol. 155] be precluded the necessity of this Court twice assembling.

Mr. Gibson: May I associate myself with that same position. Our first position here is in opposition to the stay that has been requested and we base that opposition on the ground that there is no substance in the plaintiff's case. Exactly the same issue is at the same time presented by our motion to dismiss which, if granted, will, of course, completely dispose of the merits and we think one hearing should suffice.

The Court (Judge Dobie): How about the other side?

Mr. Cooper: I would like to make it clear that we have no objection to going into the merits of this hearing. The only reservation that we have along those lines is that perhaps the record that is before this Court is not sufficient on certain issues. We are not certain about that. As a matter of fact, I have filed with the Court exhibits that I did not have available at the time I filed the complaint. For the purpose of the stay we are confident that the order of the Commission and the other materials we have attached as exhibits are sufficient, but as to the merits we are not certain. Therefore I would suggest that if Your Honors feel that you would like to go ahead into the merits, let us proceed to that point and if we find that the record is not clear that then we can determine what to do.

The Court (Judge Dobie): We can hear you and pos- [fol. 156] sibly decide the question of the temporary stay

without a decision on the merits until the rest is filed. Judge Barksdale has just said to me that we can hear you and then on the merits you can supplement your record.

We do not want to hurry you gentlemen but unfortunately we have other engagements. Judge Hutcheson has a criminal docket in Richmond tomorrow and we would like to dispose of it as expeditiously as possible without, at the same time, any desire on our part to stint you gentlemen. About how long do you want?

Mr. Cooper: I would want fifteen minutes.

The Court (Judge Dobie): For the whole presentation?

Mr. Cooper: Yes, sir.

The Court (Judge Dobie): Certainly, without consulting my colleagues, I can guarantee you that. That is the most modest request made by a lawyer during the nine years I have been on the Federal bench, so we won't have any debate on that.

Mr. Gibson: If Your Honors please, the comparison will not be so favorable on a time basis. We feel very earnestly about this case and, as Your Honors know, it is a large transaction, an urgent one in point of time. We think this is the time for Your Honors to confront the merits and once done it won't have to be redone. We earnestly implore Your Honors to allow two hours for the Chesapeake & Ohio, the Pere Marquette and Allegheny jointly. I believe Your [fol. 157] Honors can trust us not to waste time.

The Court (Judge Dobie): Does that include the Interstate Commerce Commission and the United States?

Mr. Hickey: On behalf of the United States, I think I can state our position within fifteen to twenty minutes. Mr. Kunkel represents the Interstate Commerce Commission.

Mr. Kunkel: If the Court please, the length of my statement is dependent on the others. I do not want to burden the Court with a too lengthy argument.

The Court (Judge *d*obie): We will go on as expeditiously as possible.

Mr. Turney: I would like to present a petition of intervention as of right for a number of stockholders of the Pere Marquette who are parties to the consolidation.

The Court (Judge Dobie): Do you represent them?

Mr. Turney: Yes, sir.

The Court (Judge Dobie): You may proceed for the plaintiffs. Of course your complaint is couched in very general terms and what we want you to do in making your ar-

gument in your own way is to tell us as swiftly and as clearly as you can why you think this stay should be granted in this case.

STATEMENT OF MR. COOPER

Mr. Cooper: This Court was assembled to determine the need for ordering a temporary stay of the effective date of an order of the Interstate Commerce Commission dated 1 April 1947 until a hearing and decision can be had with [fol. 158] respect to the merits of the principal controversies. The order of the Commission here involved went to the question of an approval of a merger agreement which was before the Commission between the C. & O. Railroad Company, the Pere Marquette Railroad Company and the Allegheny Corporation. A verified bill of complaint has been filed in the District Court of the United States for the Eastern District of Virginia alleging that such order unlawful and contrary to the statutory duties imposed upon the Commission by the Interstate Commerce Act as amended. The complaint prays for a temporary stay and suspension and a permanent injunction to set aside and annul such order.

Under the terms of the Interstate Commerce Act as amended, particularly the Transportation Act of 1920, unifications, mergers and acquisitions of control of carriers must be approved by the Commission before they become effective. The pertinent provisions of the Act are set forth in the memorandum which I have just submitted to Your Honors on pages 2 and 3. I will not attempt to go into the language which is controlling in this case except to indicate that the sections quoted cover two general propositions. In acquisitions of control, among other things the Commission is required to impose just and reasonable terms in approving the merger; secondly it is also authorized to examine and approve the issuance of securities in connection with such mergers and the assumption of liability in connection with such mergers and consolidations.

[fol. 159] The Court (Judge Barksdale): In what section does that language appear—just and reasonable?

Mr. Cooper: Section 5(2)(a).

The Court (Judge Dobie): You make no point of public interest, do you?

Mr. Cooper: No, sir. In the past the Interstate Commerce Commission has consistently taken the view that in

passing upon applications under Section 5(2) of the Act it is required to protect the interests of dissenting stockholders. This protection should either be included in the agreement of merger when it is presented to the Commiission or it should be a condition attached to the approval of the Commission.

We cite in our memorandum of law four very important cases of the Commission which go directly to that point and I would like to read a quotation from the *Southwestern Lines* case to indicate how the Commission has operated in the past:

> "We are not impressed by these reasons for the failure to prepare and announce a plan for the protection of minority stock interests. Before we can approve an acquisition of control under paragraph (2) of Section 5 we must find that the terms and conditions on which it is to be effected are 'just and reasonable in the premises.' They are not just and reasonable unless they include proper provisions for the protection of minority interests and we can not say that the provi- [fol. 160] sions to be made for such protection are proper until we know what they are, not prescribe proper provisions in the absence of adequate evidence which will enable us to determine what they ought to be."

This administrative practice has received judicial confirmation by decisions in the Federal Courts. In *Cleveland, C. C. & St. L. Ry. Co.* v. *Jackson* 22 f(2d), which is a Sixth Circuit opinion, The Circuit Court of Appeals was faced with a suit which had been brought in the District Court by a dissenting shareholder to enjoin a leasing arrangement and which was not a review of the Commission's order. The Circuit Court of Appeals held that the proper remedy for dissenting minority shareholders was to attack the order of the Commission in approval and not to maintain a separate suit in equity.

That is precisely what we have done in this case, Your Honors. The Court said, however, that there was no doubt that dissenting shareholders were entitled to protection by reviewing orders of the Commission which failed to protect their rights. The opinion reads as follows—and I think it

would be well if I read that opinion—at least the part that I have quoted from the memorandum of law:

"The plaintiff doubts that in determining the reasonableness of the terms the Commission has the right to consider the interest of minority stockholders, but ad-
[fol. 161] mits that it 'has assumed such jurisdiction, although never confirmed by any court decision.' We think it is the duty of the Commission to protect both the public and private interests, and although it finds that the acquisition will be in the public interest, it may not approve the lease unless it further finds that the consideration, terms and conditions thereof are just and reasonable—just to the lessor, the lessee, and necessarily to the stockholders of each. The ruling in the Nickel Plate case, 105 I.C.C. 425, evidences such an interpretation of its duties by the Commission.

"While it is true, as plaintiff contends, that the law does not require that minority stockholders be made parties to a proceeding before the Commission seeking the approval of a lease it is also true that the Commission has heard such stockholders when requested to do so, and that the statute itself, as we construe it, requires that the interest of the stockholders be considered and protected. Furthermore, the orders of the Commission authorizing a lease are subject to review on behalf of a stockholder in a court proceeding (citing cases). It results therefore that before the lease can be made effective, an objecting stockholder has the
[fol. 162] right to present his case before two tribunals, both of which are charged with the duty of protecting his interest."

This last case I quoted from, I would like to point out, in case there is some question about the leasing arrangement, the leasing arrangement was also approved by the Commission under the terms of Section 5(2), the same section we are operating under now of the Interstate Commerce Act. That is one way of acquiring control—merger on the one hand or lease on the other. The same principles are involved. There must be just and reasonable terms in each case.

Another Federal Court in *New York Central Securities Corp.* v. *United States* has also ruled that the Commission is required to protect the interests of the minority dissent-

ing shareholders and if it fails to do so the remedy is by way of the review of the order of the Commission approving the merger. It should be noted that congressional conformation has been given to both this established practice of the Commission in the past to protect the rights of dissenting shareholders as well as these subsequent judicial determinations by the re-enactment of the Interstate Commerce Act of 1940 by Congress without any change whatsoever.

The Court (Judge Dobie): The other side can talk for themselves—and there are enough there to do it—but I do not think that they would attack the general principle that [fol. 163] the Interstate Commerce Commission cannot say, "This merger is in the public interest; we like it; but we don't care anything about the rest of those stockholders: we will tear their stock up and throw it out of the window." I don't think they can contend that any such order as that would stand.

Mr. Cooper: I don't think they would either.

The Court (Judge Dobie): We will hear from them later.

Mr. Cooper: I would like to make one other point before I get to that. There are certain things in the present controversy which relate to the corporate relationship of the applicants which should have compelled the Commission to even more carefully scrutinize the merger agreement, to determine whether the dissenting shareholders were protected by its terms. The decision and order of the Commission reveals that the Chesapeake & Ohio Railroad now controls the Pere Marquette through the ownership of approximately 69 per cent of its common stock and 11 per cent of its preferred stock or approximately 47 per cent of all of its stock outstanding. The Chesapeake & Ohio and the Pere Marquette have a common president, interlocking directorates, common accounting, purchasing and engineering research departments, and common officers head their law and traffic departments. It is thus apparent that the applicants before the Commission stood in the nature of a fiduciary relation to the plaintiffs who represent a dissenting minority interest in the Pere Marquette Railway. In the [fol. 164] past the Commission has frequently stated that in circumstances such as these, where the majority and the minority interests are in conflict, a more careful scrutiny of any proposed plan of merger or acquisition will be undertaken in order to be certain that dissenting groups are

protected. I have cases cited to that effect and I might add that in the decision and order of the Commission in this case the Commission does give lip service to that doctrine and that is all, and I will get to that point in a minute.

The question now before this Court is whether the Commission in its order and decision of April 1, 1947, approving the merger plan, has taken any steps, regardless of degree or kind, to protect the interests of dissenting shareholders. It is submitted that there is not a line or a paragraph in the decision or order of the Commission which acts as a protection to dissenting shareholders over and above any protection that they had before the whole proceeding was instituted.

The crucial section of the Commission's decision as it affects plaintiff's rights is contained on pages 31 and 32 of Exhibit 1-A. An examination of that section of the opinion will reveal that the plaintiffs have received no protection from the Commission such as contemplated by previous decisions of the Commission or by judicial determination previously referred to. It is our position that having been denied the remedy that Congress intended that the Commis- [fol. 165] sion should afford plaintiffs, they have irreparably damaged to the extent that such rights that they have may or may not be the proper subject of future litigation. If the Commission's order of April 1, 1947, is permitted to become effective and if, as applicants have indicated, they intend to consummate the merger no later than June 5, 1947, plaintiffs will be left without the remedy which Congress intended unless this Court immediately enjoins the pending order of the Commission. The results which may follow from a determination of the merits of this controversy, after the Commission's order has been made effective and after the merger has been consummated are not too clear. The fact remains that the order of the Commission approving the merger is at sometime subject to judicial review. Upon this judicial review it may well be that this Court will determine that the order was contrary to law and that it should be vacated and set aside. The status of the merged corporation, as well as the shareholders in this event, will be subject to a cloud of illegality and uncertainty. Plaintiffs' sole desire at this time is to avoid this problem which this Court will ultimately be faced with and to avoid injury to third parties who are not directly involved in this controversy.

If Your Honors please, the crux of this case actually centers around sheets 31 and 32 of the opinion of the Commission and I would like to analyze that. The first quotation that I with to make is in the middle paragraph under [fol. 166] the caption "Jurisdiction."

> "Counsel for a fifth intervener correctly contends that the authority conferred on us by section 5 of the act is exclusive, primary, and plenary."

It is pointed out that in furtherance of the national transportation policy of the nation Congress conferred upon the Commission certain rights and privileges to oversee and supervise both the merger of these companies and the issuance of securities by these companies and their assumption of liability. Obviously the amounts that are due dissenting shareholders, whatever they may be, or in whatever forum, is a matter which should concern the Commission quite apart from the question of just and reasonable terms because it does have a bearing on the liability of the parties before the Commission.

The next part I wish to quote in that section is at the bottom of the page in which the Commission said—the last line:

> "It is difficult to conceive of a restraint or limitation on contemplated unifications better serving to frustrate the national transportation policy than provisions of State laws for compensation of dissenting stockholders on specified bases."

Of course, that would seem to imply that there were limitations on any litigation that might be undertaken by the dissenting shareholders in the state courts and that is [fol. 167] frankly, what we are concerned about. It could conceivably be that this opinion of the Commission approving the merger would stop us from litigating our rights before state courts and I will go into that matter a little more fully later. I am confining myself now precisely to what the Commission has said and precisely to what they have done to protect dissenting shareholders. After making this statement that Congress has freed the Commission from all of these restraints in state courts and by state law, that paragraph ends by saying: "This does not mean that the Chesapeake & Ohio and the Pere Marquette do not remain

free to settle controversies with dissenting stockholders through negotiation and litigation in the courts."

Then the next paragraph and this is the crucial one in this opinion:

> "The Chesapeake & Ohio, as controlling stockholder of the Pere Marquette, has an interest in the proposed merger adverse to the minority, and for that reason the terms and conditions proposed by the applicants compel close scrutiny. * * * In reaching the conclusion that the terms and conditions proposed by the applicant are just and reasonable, we have undertaken to do this"——

I would like to repeat that. The Commission is saying that in trying to find out whether the terms of the agreement are fair to dissenting shareholders, who have no part in the [fol. 168] agreement at all, it looks to the terms and conditions of the merger agreement which has no application to the rights of the dissenting shareholders whatever.

> "and, having reached that conclusion, performance of our duty in respect to stockholders is complete, in our opinion, when we make certain that all stockholders of the same class are to be treated alike."

In that paragraph they are talking about shareholders under the merger agreement, those who have come in and agreed, not shareholders who are dissenting.

The Court (Judge Dobie): That doesn't sound very pretty to me. Suppose all the stockholders are in class A and suppose the Interstate Commerce Commission says, "It is perfectly clear that those shares of the Class A stock, 5 per cent preferred, are worth $20,000 a share. We are going to treat them all alike; we are going to tear up that stock and throw it in the waste-barrel and tell them to go to hell"; do you understand that is what the Commission means by "treat them all alike"? Can they take everything they have got and tear it up and throw it in the fire and tell them to go to hell? That is treating them all alike. The Commission certainly doesn't mean that, does it?

Mr. Cooper: No. In this case what the decision did was to examine the merger agreement and find that those who had agreed to the merger agreement, and coming in under [fol. 169] the merger were satisfactorily and fairly treated

but nothing is said about dissenting shareholders anywhere. They are not part of the merger agreement and they never will be.

The Court (Judge Dobie): I don't hesitate to say that that *that* particular part reads like consummate bunk if they mean by that that they can cheat, steal or do anything they want as long as everybody in the same class is cheated in the same way. It certainly doesn't mean that.

Mr. Cooper: What this paragraph means, Judge, I don't know.

The Court (Judge Dobie): I don't think they can say, "We will take this stock and sell it for the benefit of the members of the Commission and we will each make a half million dollars apiece and that is all right just so we treat everyone alike."

Mr. Cooper: I don't think they mean that. In the next paragraph—and this is particularly important:

> "Whether dissenting stockholders, as members of a class created by the merger, are entitled to better treatment under their charter contract with the Pere Marquette is a question not within our province to decide."

There is a complete negation of the duty that has been placed by the Congress on the Commission to protect the dissenting shareholders, and I would like to point this out: [fol. 170] This argument before this Court today is not a question of better treatment; it is a question of any treatment. There is nothing said in this whole opinion as to how dissenting shareholders shall be treated. It is not a question of better treatment at all; it is a question of how they are to be treated in some way or other and there is nothing anywhere that covers that point.

> "Objecting stockholders have the right to present their case before two tribunals, both charged with the duty of protecting their interests."

Of course, they do, and one of the tribunals is the Interstate Commerce Commission and one of its duties is to protect their interest, which they have not done and that is why we are before the second tribunal which is this Court.

The Court: (Judge Dobie): Do you understand that to mean that the Commission is saying that they have an Interstate Commerce Commission and also have a special three-

judge court and therefore they can, if they wish, jump over certain things and leave them to the Court for the first time?

Mr. Cooper: It looks something like that in this case, although I don't know. I don't know what they had in mind.

At the conclusion of my argument I would like to make this point and I might as well make it now. In the case of each of the defendants in this proceeding I would like the Court to request that counsel point to the place in the Com- [fol. 171] mission's order or opinion where the dissenting shareholders are protected anywhere other than protection which they had before this proceeding started.

The Court (Judge Dobie): That is a fair challenge and I dare say they are going to take it up.

> Mr. Cooper; There is one more sentence: "Possibly the courts may be called upon to determine controversies between dissenting stockholders and their companies. Because of the expense that might be involved, it is necessary that we consider that possibility."

And then they go into a long discussion as to the various bases upon which dissenting shareholders could be protected.

That is the conclusion of my argument, Your Honors. There is one other point that perhaps I should go into but I don't believe that it is necessary and that is on the question of our irreparable damage and the adequacy of our remedy at law. We do not feel that this Court should take into consideration any state remedy that perhaps we should have. Our feeling is that Congress conferred a remedy here which was lodged with the Commission and the Commission has paid no attention to it and has gone ahead, approved the merger, and the order has already gone into effect without any protection to us whatsoever. However, if the Court feels that we should go into this question of [fol. 172] possible state remedies, I will be glad to go into that.

The Court (Judge Dobie): Suppose we hear from the other side and we will hear from you later. You have certainly laid down a challenge to them and I know they are going to do their best to meet it.

STATEMENT OF MR. HICKEY

Mr. Hickey: May it please the Court, first I would like to accept the challenge. If the Court will kindly turn to Sheet 31 of the Commission's opinion and report in this case, the second paragraph thereof reads as follows:

> "Accordingly, considering the Pere Marquette's investment according to its books, other property values, the company's history as to earnings, its future prospects, and the market appraisal of its stocks, all as set forth above, we find that, as to the stockholders of both parties generally, the proposed ratios of exchange, stock issues, and assumptions of indebtedness are just and reasonable."

There, Your Honors, is a specific finding by the Commission that the disposition which has been proposed in this merger is just and reasonable and we submit that that is all the statute requires. I might further point out, however——

The Court (Judge Dobie): Are you going to say anything about what those terms were?

Mr. Hickey: Yes, Your Honor. Those terms are set [fol. 173] forth in detail with respect to the dissenting stockholders on Sheet 29. Right at the bottom of Sheet 29 the Commission concludes with its statement, after a detailed analysis of these various things which are summarized in the paragraph I just read to Your Honors:

> "On the whole, it would seem that the prospects of Pere Marquette stockholders for returns on their investments would be enhanced by merger of their company into the Chesapeake & Ohio."

That is the conclusion of the Commission. This is a long report and there is considerable detail which I won't take the time of the Court to read, but there is on Sheet 18 the specific disposition which the Commission finds in that paragraph which I originally read to Your Honors to be just and reasonable. On Sheet 18 the Commission sets forth the ratios of exchange and there is set forth the exchange of stock.

The Court (Judge Dobie): In other words, I understand that for each share of five per cent cumulative prior preference stock of Pere Marquette they will receive in return one

share of preferred and one-third share of common stock of the C. & O.?

Mr. Hickey: That is correct, Your Honor.

The Court (Judge Dobie): It looks as if they have done something for them.

Mr. Hickey: Of course, they did, Your Honor. They took the proposals made, examined them and discussed them [fol. 174] in detail in their report and reached the conclusion that those proposals were just and reasonable. What is the Commission doing? It is performing its statutory obligation. Somebody says, "Well, your determination that that is just and reasonable isn't right." The way to attack that, as you well know, is to challenge it on the basis of evidence of record to support the finding of the Commission, and, if you will examine this complaint, there is not one word of challenge in it.

The Court (Judge Dobie): For example, if there was a showing that the Pere Marquette was selling in the open market at 150 and that the Chesapeake & Ohio was selling for around 50, of course one and a third for one would not be a very adequate return.

Mr. Hickey: It depends on the evidence to support the Commission's order. In all of these cases, as the Court well knows, if the Commission made a flat finding that that is a just and reasonable disposition of all stockholders, everybody, and you want to challenge that and say it is wrong and arbitrary, how do you do it? You come in and produce the evidence of record and you say, "There isn't any evidence to support that finding," and that is the only way you can upset it. There is not a word of challenge in here to the sufficiency of evidence to support the Commission's findings. In other words, the plaintiffs have proceeded on the bald assumption that there is nowhere in the [fol. 175] report, to quote his words, a single finding—in fact, he challenged me to find it and I think we have found where the Commission finds that the disposition made is just and reasonable to all the stockholders. The fundamental fallacy that the plaintiffs commit in this case throughout is that they somehow want to isolate this little group of dissenting stockholders. He wants to set them apart and he wants to set them apart not only from the majority stockholders but he even wants to set them apart from the minority stockholders and he says you must treat them as a separate and distinct class; you must make

specific findings as to them and, what is more, you must take distinct action as to them.

If you will examine all of the cases cited in the memorandum which the plaintiff has filed with Your Honors you won't find a single one of them where the Commission has ever said that it is obligated under the statute to make specific disposition as to dissenting stockholders. Not at all. All of those decisions say that the Commission must take into consideration and make findings——

The Court (Judge Dobie): Let me ask you this: Was this plan submitted to the holders of these securities? Was there any voting on it?

Mr. Hickey: Yes, Your Honor.

The Court (Judge Dobie): What was the vote? Do you know approximately?

[fol. 176] Mr. Kunkel: It is on Sheet 9 of the report.

Mr. Hickey: Sheet 9 sets forth the results.

The Court (Judge Dobie): Could you tell us broadly what they were? For example, what were they in this particular class, this stock held by the dissenting stockholders?

Mr. Hickey: It constitutes approximately two per cent of the total stock. The dissenting stockholders constitute approximately two per cent of the total amount of stock held and about ten per cent of the minority stockholders.

As I said, the Commission has recognized its duty in cases under Section 5(2) to look after the interests of minority stockholders but there is a very important point to be made in connection with that: If you will examine those cases you will find that every single one of them is a stock acquisition case or a lease case. Why is that important as distinguished from this case? Simply because in this case you don't have a stock acquisition case where one corporation is going to control the other and that corporation is going to continue to exist. You have its abolition by this merger, the consolidation of that corporation and you have now the origin of one single corporation. Why is that important? It is important for this reason: When you have an acquisition of stock and you have these majority stockholders taking over another corporation, they are obviously, in the old traditional equity sense, in a fiduciary relationship to the minority stockholders. Why? Be-

[fol. 177] cause they could take action through their majority control to freeze them out by deteriorating the service

or by taking action which would divert traffic from their routes and, in other words, put them behind the 8-ball. You don't have that situation here and that is why this case differs essentially. But even conceding that the Commission's finding with respect to the acquisition cases is equally pertinent in a consolidation proceeding, the Commission has made a finding here. They found it just and reasonable.

There is a further point to be made and that is that there is no statutory obligation of the Commission to specifically protect the rights——

The Court (Judge Dobie): I notice in that tabulation—I don't know whether it means anything but I will throw it out to you—those voting for the merger and against it, and the highest percentage against it, which is less than a third, is the Pere Marquette preferred which I understand is the stock that the plaintiffs hold here—73,230 for and 30,000 against, whereas on the other side you—4,500,000 to 50,000, about ten times, and 374,000 for and 27,000 against, which is more than ten times. In other words, there is a very much higher percentage of dissenting stockholders when you get to the preferred stock of the Pere Marquette.

Mr. Hickey: That is right.

The Court (Judge Dobie): I don't know that that means [fol. 178] any thing.

Mr. Hickey: In connection with that question I would like to have it discussed by the people who are quite familiar with the actual transactions that took place here. I got the case on short notice and I have prepared my argument along definite legal lines and I think in justice to Your Honors the question could be more adequately answered.

The Court (Judge Dobie): I do not mean to interrupt you when these points come up but I think that has something to do with the situation. If you have a very large group of these people, almost a majority, I think their case could be stronger than if you had an infinitesimal minority.

Mr. Hickey: I would like briefly to refer to the statute itself on which the Commission is proceeding and under which the plaintiffs have charged the obligation to exist. Before I do that I would like to read one brief statement from the plaintiffs' complaint. On page 3 of the complaint, paragraph 6, the plaintiffs come down to what they have described as the crux of this case and I will concede that

it is. It is the crucial thing in this case. Plaintiffs state failure to include protection for the plaintiffs as dissenting shareholders as a distinct class created by the merger is contrary to law and in direct violation of the Commission's statutory duty to impose just and reasonable conditions for the protection of all interests concerned. That is the only [fol. 179] charge made in this case. As I said, there is no challenge to the accuracy of the findings; there is no challenge to the sufficiency of evidence to support what findings are made. That is the bald assertion, that the Commission has not discharged an obligation made obligatory upon it by statute. Let us look at the statute.

The Court (Judge Dobie): I don't quite understand what he means by failure to include protection. That is a pretty broad phrase and it is a pretty indefinite phrase and I would like him to tell me when he comes back exactly what he means by that when I understand from you that there are express provisions as to how many shares these people get and how they get them, and so on.

Mr. Hickey: My first answer is that there is no obligation on the Commission at all to treat dissenting stockholders nor have I ever seen any decision anywhere which even mentions the word "dissenting stockholders." It always speaks in terms of minority stockholders and these dissenters are but a small part of the minority stockholders involved in this case, as a subsequent argument by Mr. Turney will make clear to Your Honors. In the second place, even assuming in the argument that there is an obligation on the Commission, the Commission has in its report taken care of the interests of the dissenting stockholders. In other words, it has gone farther than the statute requires. All that the section requires—the specific words of the statute are:

> [fol. 180] "If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable."

There is the entire statutory obligation. The Commission has specifically followed the requirements of the

statute. It has found this matter to be in the public interest and it has further found that the terms and conditions proposed are just and reasonable. That is the Commission's obligation and we submit it has discharged that obligation.

I would like to make brief reference, Your Honors, to a Supreme Court decision—*New York Central Securities Corp.* v. *United States*, 287 U. S. 12, a case decided in 1932. I don't like to burden this hearing with citation of cases but the reason I specifically call this to your Honor's attention is this: In the plaintiffs' memorandum he cites the lower court's decision. There is no citation to the Supreme Court's decision which affirmed that lower court decision and there is a very significant difference between the two opinions, and it says that when the issue of protection to minority stockholders—not dissenting stockholders—arose [fol. 181] in the lower court, the lower court treated it like the case the plaintiffs cited to Your Honors that he read from as an obligation of the Commission but it found that the Commission had satisfactorily performed that obligation.

The Court (Judge Dobie): You admit, do you not, that the Commission owes some kind of duty to all security holders?

Mr. Hickey: That is correct but I would like to make this distinction which I think this case points out: When this case got to the Supreme Court, the Court acknowledged that there was an obligation here but it pointed out that any right that existed didn't give the plaintiff standing to maintain an independent suit because it happened to be a small part of the stockholding group that didn't like the action that was taken, and it did so significantly in the following words, quoting from page 28 of the decision:

> "Questions as to the alleged breach by the New York Central, as majority stockholder of the Michigan Central, of its fiduciary duty to the appellant as minority stockholder, in the light of the terms of the indenture under which the voted shares had been pledged to secure bonds, are not properly raised in this suit under the Urgent Deficiencies Act and hence are not open to review on this appeal."

It simply means that the Court has recognized that the Commission, in order to deliver a fair and just opinion,

[fol. 182] must of course take into consideration, in reaching the conclusion that the terms and conditions proposed are just and reasonable, the way in which those terms affect stockholders as a class.

The Court (Judge Dobie): The effect it would have on different ones in different situations?

Mr. Hickey: Correct, but that doesn't mean that a small group, a dissenting group within the minority stockholders, can come into Court and maintain an independent suit. Why? If you read through the records and briefs that were filed in connection with that *New York Central Securities* case as I have—and I don't want to take the time of the Court to go through them—it is quite clear that the remedy that exists is available to the plaintiffs in other tribunals. If it is a contract right he should sue on that contract right. He has his remedy and the Supreme Court was taking pains to point that out.

The Court (Judge Dobie): The Interstate Commerce Commission in these cases does go into countervailing and comparative equities of the parties?

Mr. Hickey: That is correct.

The Court (Judge Dobie): I remember in the Seaboard case I heard about six of those appeals. There was the question of bonds in the Deepwater and High Point Railway Company, I think about forty miles down in some southern [fol. 183] state and just before the reorganization some man bought a million dollars worth of those bonds. I forget whether he paid 35 cents or two dollars and a quarter for them. I certainly know we took into consideration that that man got those bonds for practically nothing and tried to block a big reorganization for his own profit, whereas if that had been bought at face value they would certainly have much more standing in Court. I understand, of course, that the Commission can't go into minute detail but it considered the comparative equities of all parties?

Mr. Hickey: The only point I am trying to make is that the Commission cannot single out little blocks of stock here and there and say, "This fellow doesn't like what happened and here are a couple more that don't like the arrangements and we will take that into consideration." The Commission has to approach the problem and the primary criterion is from the public interest and the interest of adequate transportation, adequate economical transportation in terms of the national transportation problem. There isn't a re-

organization proceeding or liquidation proceeding where you get into fine details of each specific block of stock, but the Commission, as Your Honor suggests, recognizes that a fair and equitable disposition must be made in order to find that the terms of the merger are just and reasonable and it has done that here.

In conclusion, Your Honors, I would like to say that this is a rather technical point but it certainly should be made. [fol. 184] Under Section 47 of 28 U. S. C., under which we are proceeding today, on a motion by the plaintiff for a temporary stay, there is the specific requirement——

The Court (Judge Dobie): Irreparable damage?

Mr. Hickey: There has been no showing of irreparable damage. The only way I know of that you can show irreparable damage is to introduce your witnesses or offer affidavits. There has been no attempt to show irreparable damage here. That is jurisdictional. It says in the statute that the Court shall not enter the injunction unless it is shown and it differentiates.——

The Court (Judge Dobie): If we make a specific finding of irreparable damage, then it must be by incorporation by reference before the Court and bring it in.

Mr. Hickey: How can you do it?

The Court (Judge Dobie): That is a problem.

Mr. Hickey: Unless you have some questions, that is all I have.

The Court (Judge Dobie): We are very familiar with the terms of that statute.

Mr. Hitt: I have a motion to intervene on behalf of Sterling Grace & Company of New York, Connecticut Mutual Life Insurance Company and Keystone Custodian Funds, stockholders in the Pere Marquette Railroad.

The Court (Judge Dobie): For what purpose are you [fol. 185] intervening?

Mr. Hitt: Intervening in support of the Commission's decision.

STATEMENT OF MR. KUNKEL

Mr. Kunkel: May it please the Court, I appear on behalf of the Interstate Commerce Commission. I will take a moment to focus the attention of the Court upon the motion for temporary stay. As this Court knows, the orders of the Commission are not automatically stayed with the filing of a suit under the Urgent Deficiencies Act. The temporary

stay which the Act provides for is an extraordinary remedy. The Court in exercising its discretion in the matter of the issuance of the temporary stay I think should be satisfied on four particular points; first, that the plaintiff has standing to maintain the suit on the face of the complaint, which is the only pleading which the Court has to look to; second, that from the face of the complaint the issue is one cognizable by the Court; and, thirdly, that the equities lie with the plaintiff; and, fourth, the statutory requirement that the failure to issue a temporary stay will work irreparable damage to the plaintiff.

The plaintiffs here are a small minority of preferred stockholders. They have so designated themselves before the Commission and in the complaint in this case. The complaint charges the Commission (and I think this is the only issue in the case) with failure to perform its full statutory duty in failing to include protection for plaintiffs [fol. 186] as dissenting stockholders as a distinct class. The complaint fails to allege what the plaintiffs deem just and reasonable conditions for the protection of the rights that they claim. Paragraph 7 of the complaint alleges the Commission's failure to recognize and protect the plaintiff's rights under the Interstate Commerce Act, but the only rights of the plaintiffs under that act are to be accorded just and fair treatment.

The Commission in this case found that the proposed ratio of exchange of securities was just and reasonable to all parties in interest which included these particular plaintiffs.

The Court (Judge Dobie): And the Commission, I suppose, had quite a good deal of evidence before it, did it not?

Mr. Kunkel: The Commission had not only quite a great deal of evidence but if the Court will refer to the report itself where it undertook to evaluate the securities of the acquiring company and of the company to be acquired.

The Court: (Judge Dobie): Where is this?

Mr. Kunkel: On Sheet 24, where they discuss the market price, the earnings of both companies, the histories of the companies with respect to those earnings and they took into consideration property values and took into consideration valuations which the Commission had determined which we know as rate-making valuations, and having considered the proposed ratio of exchange in the light of all those various

[fol. 187] tests of value, it came to the conclusion that the ratio represented a fair rate of exchange for the stock.

The Commission in making that determination was not concerned with whether one group of stockholders was unanimous in assenting to the merger plan. I submit it would still have been the duty of the Commission, if there had not been one dissenting stockholder of a given class, to determine whether those stockholders were being treated fairly and justly, and the mere fact that a very small group of those have indicated their intention not to go ahead with the plan or take advantage of the merger agreement doesn't impose an additional duty under the statute upon the Commission, and the Commission in its report recognized that. It found that it did not have any jurisdiction to adjudicate the private rights of individual stockholders who might be unwilling to go along with the merger, whether those rights arose by virtue of state merger laws, whether they arose out of the common law in merger proceedings to have the dissenting stock evaluated and to be paid for in accordance therewith, or whether they arose out of the actual contractual rights which arose under the terms on which the stock itself was issued. But the Commission did not foreclose the rights of any of these dissenters, whether there be one or a thousand, to pursue whatever their legal remedies were, and I think that is perfectly clear.

If the Court will refer to Sheet 32, the last paragraph, [fol. 188] it says:

> "Possibly the courts may be called upon to determine controversies between dissenting stockholders and their companies. Because of the expense that might be involved, it is necessary that we consider that possibility."

What did the Commission do? It started with an estimate that there would be two per cent of the stockholders who might refuse to go along with the merger. Then the Commission was concerned with how much would the companies have to pay out to release them from the obligations of those stockholders, and it made computations on three bases—the book value of the stock, the value based on earnings, and the market price—and then it came to the conclusion that with respect to any of those bases upon which the Chesapeake & Ohio might be called upon to satisfy the claims of the dissenting stockholders "it appears that the

consummation of the merger will not involve a burden of excessive expenditure.

The Court (Judge Dobie): That means on the part of the stockholders?

Mr. Kunkel: That means in paying off the dissenters. So therefore we say that the Commission's order in this case did not compel these plaintiffs to accept the terms of the merger. Stockholders who are unwilling to acquiesce in the merger were left with the alternatives of selling their [fol. 189] securities at the market or invoking such rights as they might have under state law, common law or their contract. The Commission in its report, as I pointed out, specifically recognized that right and in any case the Commission is not the forum in which such private rights are to be adjudicated and there is no compulsion in the Interstate Commerce Act upon the Commission in that respect. Plaintiffs have an adequate remedy at law, recognized by the Commission in its report, and therefore, having an adequate remedy at law, they have no standing to invoke the equity powers. What this suit is, in essence, is an attempt to compel the Commission to adjudicate the private rights of these particular dissenting stockholders and those are private contractual rights arising out of their stock holdings. Their objective, while it is well disguised, is to obtain the par value of that stock plus the unpaid dividends that have accumulated to date, and that is the sole object of this.

The determination of that question involves adjudication of legal principles, principles that the Commission is not competent to pass upon and which might involve the laws of state jurisdictions, various state jurisdictions, and therefore we say under the authority of the Supreme Court in the *New York Central Securities* case that the issue here is not one that is cognizable.

The Court (Judge Dobie): Let me see if I understand it: Suppose you have four corporations and they are being [fol. 190] merged, one in Michigan, one in Indiana, one in Illinois and one in Ohio; as I understand from you, it is not up to the Interstate Commerce Commission in approving one of these mergers to pass on what the rights of all of those parties would be under the laws of the states?

Mr. Kunkel: No. It might be, as in the case of Virginia, that provision is made for dissenting stockholders in a merger to apply to the court and have three appraisers appointed to appraise that stock. In another state it might

be five appraisers or they may have different bases upon which that stock is to be appraised. It would put an insuperable burden on the Commission to go into those various state laws and make a determination in this case as to what each particular dissenter might expect to get out of his stock, and we say, of course, there is no evidence of irreparable damage here.

As to the balance of the equities as between the vast majority of assenting stockholders in this case and this very small group of dissenters, I leave that to the interveners who represent those classes directly.

STATEMENT OF MR. GIBSON

Mr. Gibson: May it please the Court——

The Court (Judge Dobie): You are appearing for the C. & O.?

Mr. Gibson: Jointly for the C. & O., Pere Marquette and Allegheny Corporation, the three companies before the Commission.

[fol. 191] Your Honors have heard able statements of certain aspects of the case for those roads and the Allegheny Corporation, and we shall attempt to give the Court an orderly consecutive statement in summary form of the whole of this transaction. Our point of view, as I said in opening, is that we do not believe that there is any substance in the plaintiffs' petition and, for that reason, we ask that the stay be denied and that the petition be summarily dismissed.

Let me ascertain and identify the issue. What is the issue? What is Mr. Cooper here complaining about? That is not altogether an easy question to answer because of the notable generality with which his case has been presented to this Court. I think it clear, however, as Mr. Kunkel has so ably said, that what he is looking for is cash. He does not assert that this merger of the C. & O. and Pere Marquette is not affirmatively in the public interest as the Interstate Commerce Commission has found. All he is seeking to get is better treatment for the preferred stock of Pere Marquette Railway Company held by his clients. So it comes down to a question of money.

The Court (Judge Dobie): You admit that has some slight importance.

Mr. Gibson: Of course, Your Honor.

The Court (Judge Dobie): You rem- -ber the story of the

Irishman who was run over by a truck and he was knocked [fol. 192] unconscious and as he was coming to in the hospital he heard the nurse say, "He will recover." He said, "How much?"

Mr. Gibson: Your Honor will understand I was not seeking to disparage the issue by characterizing it a question of money.

The Court (Judge Dobie): I have known several judges to consider things of that kind.

Mr. Gibson: Specifically then, what does this question of money mean as applied to these issues here. The assertion means that the Interstate Commerce Commission was under an absolute legal duty to require as a condition to authorizing this merger that a sum in cash be set apart for the payment of the preferred stock of the Pere Marquette Railway Company, even though the Commission, under the mandate of Congress, has discretionary administrative authority to review and weigh and appraise the relative worth of these various claims and determine the particular treatment that is just and reasonable for each, and it is solely because the Commission refused to impose an express condition requiring the setting aside of cash for these dissenters——

The Court (Judge Dobie): They got a certain number of shares in the C. & O., didn't they?

Mr. Gibson: Of course under the merger agreement they will. I would like to come to that when I reach the merger agreement.

[fol. 193] Your Honors have been given a very fragmentary and inaccurate picture of the merger agreement. It does not only provide treatment for assenters; it provides treatment for every share of stock but, as Judge Barksdale has pointed out, dissenters who have given notice of objection within a certain period have an additional privilege and in lieu of taking that stock they may ask for cash under the Virginia law, if they prefer to do it. So the decisive question is whether the plaintiffs have any legal basis for a claim that there was an unequivocal duty on the part of the Commission to establish separate cash protection for their benefit as dissenting stockholders. The only ways such a contention could be made are one on the state law and the other Federal. It is not the duty of this Court or of the Interstate Commerce Commission, as Mr. Kunkel has so clearly pointed out, to sit for the purpose of enforcing appraisal remedies that may exist under state legisla-

tion. True enough, a number of the states, and Virginia is one of them, provide that in the event of merger dissenting stockholders are entitled to get cash, but by applying to a state court and conforming to state-directed procedure.

The Court (Judge Dobie): As I understand, the Interstate Commerce Commission does not in any way touch or impair those rights?

Mr. Gibson: Precisely, Your Honor. That is, as we conceive it, the only argument the plaintiff could make here, [fol. 194] namely, that there is something in the report or something in the order of the Commission that has the effect of superseding that right of appraisal that would otherwise be open to them under the state law, but of course I will point out the words and make that plain when I get to the Commission's action. As a matter of fact, the Commission was perfectly unmistakable on that point. The Commission said:

> ". . . the Chesapeake & Ohio and the Pere Marquette . . . remain free to settle controversies with dissenting stockholders through negotiation and litigation in the courts."

And in conformation of the meaning of the Commission's original language, as admitted by Mr. Kunkel in the record here this afternoon, we also for the affected carriers admit that the Commission's action leaves the plaintiffs entirely free to prosecute any appraisal rights they may have under legislation of the states.

If, on the other hand, the plaintiffs argue that as a matter of state law they are entitled to require the Commission to improve on their rights under state law, we submit that is a contradi-tion in terms and deserves no further consideration.

There is some intimation in their briefs and petitions before the Commission that what they seek is a trust fund set up in cash for their security. All of these appraisal stat- [fol. 195] utes in the several states do nothing more than provide an optional position of a creditor for dissenting stockholders who take certain steps by giving notice within prescribed periods, but the status of a creditor is universally considered sufficient for the protective policies of that local legislation and, so far as I know, no such statute has

ever gone to the length of setting up a trust fund for the benefit of dissenters. The magnificent credit standing of the Chesapeake & Ohio Railway as one of the healthiest and richest railroads in the country would make any suggestion of that kind perfectly absurd on the facts of this case. So clearly, we submit, no possible issue under the appraisal rights of state legislation could possibly arise here.

It follows from this gradual elimination of possibilities that there is only one assertion that could sensibly be made before this Court and that is that the Schwabachers were entitled as a matter of Federal Law to require the Commission automatically and as a matter of duty to establish a cash fund for their benefit, despite the fact that the statute empowers the Commission to exercise an administrative discretion on the fairness of the plan proposed before it. Unless such assertion is sound, it is impossible, we submit, for the plaintiffs to have any standing in this Court and we submit that any such assertion is flagrantly unsound because it would undermine the whole policy of the applicable Federal legislation.

[fol. 196] One other comment on the issue and that is an important one. Surely the Schwabachers cannot assert to this Court that as a matter of state legislative position or constitutional right they are entitled to retain their stock in Pere Marquette and thus prevent the accomplishment of the merger. It is settled law that the Federal agencies, in the accomplishment of Federal policy are entitled to override the existing provisions of securities existing under state law, whether by dissolution of state corporations as the Supreme Court held in *American Power & Light Co.* v. *S. E. C.*, or by rearrangement of security holders' interests in state corporations, as Your Honors have known, from 1904 (*Northern Securities* case and the *Reading* case). So I come back to the point that the only issue that can be presented is whether Federal law imposes such a mandatory duty on the Commission, despite its attempt to confer discretionary authority——

The Court (Judge Dobie): Suppose one of these stockholders said, "I am a shareholder and my father was and my grandfather and he got some from old man Pere himself and I am going to hold on to my stock come hell or high water," could he do it?

Mr. Gibson: You can make him turn it in under two grants of power; first, the statute of the state of Michigan,

under which Pere Marquette is incorporated, provides in terms that a merger may be made upon the assenting vote of [fol. 197] a majority of each class.

The Court (Judge Dobie): Suppose he said: "I don't want any rights under it but I am going to stay a Pere Marquette stockholder?

Mr. Gibson: He is entitled to retain his certificate as a sentimental souvenir but his legal rights are those of a C. & O. stockholder. He can keep the paper but his legal rights are governed.

The Court (Judge Dobie): I know a lady who kept her coupons. She said they looked so pretty on a corporate bond. She had a perfect right to do that, of course, and not collect them.

Mr. Gibson: If that is then an accurate identification of the only issue that is presented here, I should like to go first to a general and very brief summary of how this case came up, what the facts are, and then to explore briefly the statutory provisions that define the powers of the Commission and the resulting permitted scope of review.

Perhaps you would like to have a map which shows the properties we are talking about. As Your Honors know and as the map makes graphic, the C. & O. is a major road between Chesapeake Bay on the east and Toledo and Chicago on the west. Its principal business is carrying coal. Indeed, it is the largest bituminous coal originating carrier in the country. On the other hand, the Pere Marquette is [fol. 198] centralized in the lower peninsula of Michigan. It connects with the C. & O. at Toledo, at Chicago, and at La Crosse, Indiana, and its territory is principally an industrial region, coal consuming manufacturers. Naturally the lines are complementary so that the Pere Marquette is the natural northwest extension of the C. & O. facilities. As a matter of fact, the C. & O. acquired control of the Pere Marquette back in 1929 with the approval of the Commission. So there has been a period of actual demonstration through the years of the value——

The Court (Judge Dobie): They have had unitary management?

Mr. Gibson: Additional advantages are expected to flow from the merger—reduction of interest charges on Pere Marquette funded debt and it rather strengthens its credit position and supplying a strong, uniform and efficient carrier throughout the whole region of the two systems and

finally producing operating economies estimated at about three hundred thousand dollars a year.

In the background negotiations were begun in the latter part of 1945 for a merger of the two companies and they culminated in a merger agreement. It was approved by the boards of directors of both companies on February 19, 1946. That is the proposal that is before Your Honors today. It was then submitted to the stockholders of both companies. A question was asked about that earlier. It was approved [fol. 199] by the holders of 59 per cent of all outstanding shares of common stock in the C. & O., the only class of stock outstanding of the C. & O. It was approved by an equal or greater vote of the outstanding shares of each of the three classes of Pere Marquette stock, namely, 82 per cent of the outstanding shares of common stock, 59 per cent of the preferred stock represented by Mr. Cooper and 71 per cent of the prior preference stock.

Maybe Your Honors would feel that a more realistic tabulation of the vote is in terms of the percentage voting for to the total voting rather than the total outstanding because so many people insist on sleeping, no matter what you send them through the mail. On those percentages C. & O. was 99 per cent, Pere Marquette common 93 per cent, Pere Marquette preferred 71 per cent and Pere Marquette prior preference 93 per cent. To the vote of the preferred stock we are unable to attach any distinctive significance.

The Court (Judge Dobie): Maybe people up in Michigan don't know how good the C. & O. is.

Mr. Gibson: They may have voted on the Civil War reasons but anyway the issue before the Commission was what was fair and equitable and not popular vote.

When this vote was had the merger agreement was submitted in lengthy proceedings before the Interstate Commerce Commission. I want to comment on that just for a moment. The application was filed on March 8, 1946; a full [fol. 200] hearing ensued; briefs were filed; a proposed report was issued by an examiner; exceptions and briefs in support of exceptions were then permitted and at that time Mr. Cooper came in for the Schwabachers to object to the plan. Then the case was argued orally and finally on April 1st of this year Division 4 of the Commission handed down its report and order authorizing the merger and that is the report and order that Your Honors have before you now.

The Court (Judge Dobie): It never went to the full Commission?

Mr. Gibson: I think not.

Mr. Kunkel: It went to the full Commission on petition for reconsideration which was denied by the full Commission.

The Court (Judge Dobie): Unanimously?

Mr. Kunkel: Yes, sir.

Mr. Gibson: Your Honor will understand by statute Division 4 has the full power——

The Court (Judge Dobie): I understand. It adds a little more force when it is the Commission and not just one division.

Mr. Gibson: More people saying the same thing when one is sufficient.

The merger agreement is not designed, as Your Honors might have supposed from the comment—not intentionally—of Mr. Cooper, to relate only to the rights of people [fol. 201] who want to vote for it. The words as quoted by the Interstate Commerce Commission are universal in their application. A merger agreement necessarily must be under Virginia law. Otherwise it can't be approved. It provided specified treatment, differing in nature, for the holders of each of the three classes of stock of Pere Marquette Railway Company. So far as the preferred stock is concerned, held by the Schwabachers, the treatment is eight-tenths of a share of new 3½% per cent convertible preferred stock of C. & O., convertible into 1 6/10 shares of common and, in addition——

The Court (Judge Dobie): Three-eighths of one of those shares?

Mr. Gibson: Eight-tenths, Your Honor and, in addition, four-tenths of a share of common stock of C & O. That package is to be given to each one share of Pere Marquette preferred stock, whether voting for the merger or not, or dissenting or not. Everybody is entitled to get that. That is the treatment proposed in the merger agreement and that is the treatment with which the Commission was concerned.

The Schwabachers did not oppose the merger itself. They intervened before the Commission for the purpose, as here today, of seeking better treatment, more favorable treatment for the Pere Marquette preferred stock.

The Court (Judge Dobie): Did they appear before the Commission and say, "Three-eighths isn't enough but five-
[fol. 202] eighths would be"?

Mr. Gibson: They have not articulated their demands in the form of any specified percentage of new securities.

The Court (Judge Dobie): Merely indicated that what has been given to them by the Commission is not enough?

Mr. Gibson: Exactly, and the obvious intent of their intervention there, as Mr. Cooper said, was to procure cash in an amount equal to par plus accumulated unpaid dividends on their stock.

The Pere Marquette preferred stock that is given very substantial recognition in the merger agreement hasn't paid any dividends since 1931.

The Court (Judge Dobie): They received nothing before and they wouldn't be satisfied with twice as much?

Mr. Gibson: No arithmetical factor would satisfy them.

The Court (Judge Dobie): One man complained bitterly of his allowance. They had nine of these bondholders committees so he went out and formed another just to make it a little harder and his contribution was that he did everything he could to keep anybody from doing anything. So Judge McClintic allowed him nothing. I asked him if he thought he would be satisfied if we multiplied that compensation by fifty and he thought a minute and said, "No."

Mr. Gibson: I hope Your Honor will not ask me mathe-
[fol. 203] matically——

The Court (Judge Dobie): I wouldn't be afraid to ask you what is twice nothing. Even a Harvard man knows that.

Mr. Gibson: Those were the exceptions that the Schwabachers made before the Commission and Your Honors may be sure those contentions were not ignored before the Commission. On the contrary they were considered in the most painstaking and thorough way and the Commission in its report recognized that under Section 5 of the Interstate Commerce Act, giving it authority over mergers and other unifications, and under Section 20(a) of the same act, giving it authority over the issuance of securities, it had a statutory mandate to impose terms that would be just and reasonable and as a result of that the Commission considered the fairness of the merger terms from the point of view of each of the three classes of Pere

Marquette stockholders, weighing for this purpose past earnings, prospective and future earnings and market ratios of the old stock on "when issued" basis for the new, and book value and so-called rate-making values, if they have any true significance.

The Court (Judge Dobie): Was there any trading in this stock "when issued"?

Mr. Gibson: Yes, Your Honor.

The Court (Judge Dobie): On the Board?

Mr. Gibson: I don't know that it is listed on the Stock [fol. 204] Exchange. It may be over the counter. The quotation at the close yesterday I think was 98. I can get the figure more precisely.

The Commission's ultimate finding is summarized in these words:

> ". . . considering the Pere Marquette's investment according to its books, other property values, the company's history as to earnings, its future prospects, and the market appraisal of its stocks, all as set forth above, we find that, as to the stockholders of both parties generally"——
>
> And the Commission's ultimate finding was "—the proposed ratios of exchange, stock issues, and assumptions of indebtedness are just and reasonable."

Your Honors will note that is not confined to the assenting stockholders; it is extended to all stockholders of both parties generally, and they looked at that not only from the point of view of the overall picture but separately and specially. That was the Commission's overall conclusion that this allocation of eight-tenths of a share of preferred and four-tenths of a share of common was just and reasonable and in the light of that basic finding——

The Court (Judge Dobie): As I understand, they found they were not only getting as much but they were getting more.

[fol. 205] Mr. Gibson: Your Honor has touched at the bottom of that page on a very important thing. The nominal dividend rate on the Pere Marquette is five per cent which wasn't paid and hasn't been paid since 1931. Your Honors must not misunderstand me. During the war period the Pere Marquette traffic had been swollen, of course, like other railroads to high levels and substantial earnings have been

made on its preferred stock but the Pere Marquette has had problems. There were deficits earlier and it had family troubles to settle in its debt structure which has now been substantially improved. Those are the reasons why the C. & O. was willing as a financial matter to undertake a merger with the Pere Marquette.

But coming back to this, they have a dividend rate of five per cent and it wasn't paid and under the allocation of new securities provided in the merger agreement those same stockholders will get a return on existing dividend rates, which the Commission found could be reasonably continued, of 4.2 per cent, if they elect to retain their 3½ per cent preferred position, or of 5.88 per cent if they convert into common.

The Court (Judge Dobie): Where is that?

Mr. Gibson: That is the table at the bottom of page 29. So that was the conclusion of the Commission on the real merits and then they took up this separate special contention of the Schwabachers that because they dissented they [fol. 206] were automatically entitled to a cash award, irrespective of the quality of the security allocation. On that point the Commission noted two things—and I am trying to summarize Sheets 31 and 32 of their report. On Sheets 31 and 32 the Commission noted in the first instance the dominance of the public interest in these matters of railroad unification. In the second place it noted the effect of its own order, accorded to it by an Act of Congress, as an aid to the accomplishment of the Federal policy of an exclusive and plenary authorization that automatically relieved the carrier of all restraint and limitations of law, whether state or federal, and at that time the Commission said (I am quoting from the bottom of page 31)—this language has been referred to earlier but I will mention it to make my statement consecutive:

> "it is difficult to conceive of a restraint or limitation on contemplated unifications better serving to frustrate the national transportation policy than provisions of State laws for compensation of dissenting stockholders on specified bases. The prospect of facing appraisal of any considerable number of minority shares (possibly as much as 49 per cent) well might give pause to potential proponents of any proposal . . . and thus operate to deter contemplated steps toward accom-

plishment of the unification desideratum of the national policy."

[fol. 207] That might have afforded the Commission the basis for it to take a further step and in terms say, "We hereby outlaw appraisal rights under state statute in order to avoid this block in the path of the accomplishment of Federal policy of unification," but it didn't do so.

The Court (Judge Dobie): Does the statute say in the case of one of these mergers that the Interstate Commerce Commission must accord to each stockholder of a particular class the highest type of right that is accorded by any state?

Mr. Gibson: That is the whole point.

The Court (Judge Dobie): There is nothing in the cases or statute that requires that?

Mr. Gibson: There is nothing in the statute law that says so and no decision has ever held so. As a result it is merely a matter of the Commission's administrative settlement of the relative worth of the old securities and new.

The Court (Judge Dobie): And I guess the Commission is fairly well informed about the nature of its rights.

Mr. Gibson: That is its business. May I amplify a statement of other counsel? I think the Commission in weighing the investment worth of the old securities must take into account the relative priorities and the distinctive rights. I don't think counsel meant to deny that. I think what Mr. Kunkel meant to say was only that the Commission has no responsibility to see how the local appraisal laws would [fol. 208] result and how much in dollars and cents would be derived by various proceedings in various states. The point of this observation is that the Commission did not undertake to supersede appraisal statutes, though the C. & O. was entirely willing to see a condition recognizing a right of the plaintiffs to an appraisal under Virginia law. We are perfectly willing to do that and it is our purpose to institute proceedings for that purpose. The Commission found that in reaching the conclusion that the terms and conditions are just and reasonable they have undertaken in effect to give close scrutiny to them because of the majority stock holdings by C. & O., and here are the critical words I wanted to emphasize:

"and, having reached that conclusion, performance of our duty in respect to stockholders is complete, in

our opinion, when we make certain that all stockholders of the same class are to be treated alike."

Judge Dobie observed that it is not sufficient that they be treated equally by all being given nothing. The essential point to the Commission's statement is that having reached that conclusion, that is that the award of new securities is intrinsically just and reasonable, then the performance of their duty is complete by seeing that they are treated alike. What the Commission had in mind, if I may interpret, and I think the meaning is clear, is they wanted to see that there was no penalty. It was the former practice in reorganiza-
[fol. 209] tion technique to drive people into an affirmative vote by penalizing those that resisted and the Commission wanted to be sure to see that equality was offered to all members of a class. That is the meaning of the sentence but it is contingent on the first finding that the award of new securities is just and reasonable. And so, in terms, the Commission left the Pere Marquette preferred stockholders free to pursue any appraisal rights they may have under state legislation. That was the whole finding on the merits—the main points.

After this order of April 1st came down the Schwabachers filed a petition for rehearing. The Commission thereupon entered an order suspending the effective date of the April 1st order until the further order of the Commision and having completed its reconsideration of its rehearing petition another order was entered on May 20th, the one I mentioned at the outset of this hearing, denying the rehearing and ordering that the April 1st order should become effective fifteen days after date which, as we compute, was this morning. So that the Schwabachers are given two weeks in which to institute a suit in this Court if they wished to do so and they didn't do a thing except to write a letter to the Commission on May 23rd, asking the Commission to change its mind and give them a further stay.

The Court (Judge Dobie): The Commission has power to grant a stay?

[fol. 210] Mr. Gibson: I have no doubt. It did so once.

The Court (Judge Dobie): Did they ask them to stay it?

Mr. Gibson: Yes. On May 23rd they wrote a letter asking the Commission to grant a further stay of its own order.

The Court (Judge Dobie): So it could be heard by the court?

Mr. Gibson: Just to make it more convenient for them to get Your Honors here so Your Honors might not have to come back again, but the Commission denied that and only then did the Schwabachers come here asking the same relief.

The Court (Judge Dobie): You will have to commend them for exhausting all of their resources before the Commission.

Mr. Hickey: In fairness to the plaintiff, I think the plaintiff was making an effort to preclude the necessity, if possible, of twice assembling this Court and the Commission, on the other hand, felt that the matters raised by the request for a stay, in fairness to all parties, should be determined by the Court and the Commission has traditionally taken the attitude that if there is going to be a stay the Court for the protection of all concerned should do it and the Commission had no such power, so I believe in fairness to the Court that statement should be made.

Mr. Gibson: I welcome the correction. I was seeking to be fair and if that is a better statement I am very happy [fol. 211] it was made. The point however is that they are here.

On that record and on that administrative background we submit there is no substantial basis in law for the plaintiff to ask any relief from this Court, and I can be more brief I believe with the presentation of our position on the law than in the development of how the case came up.

We have only three points to present. The first one is that the Commission has statutory authority to exercise an administrative discretion over all terms and conditions of a merger agreement, both the matter of public interest and also the matter of relative treatment of security holders; secondly, that having been done by the Commission, the scope of review permissible to any court is merely to determine whether the order presents an error of law and it is not competent for the Court to substitute its judgment for the discretionary conclusions of the Commission on the facts. In the third place, the allocation of new securities instead of a cash award is a typical function of that administrative structure and there is no separate class created by the mere fact of dissent. Those are the only three things in my part of the argument that I should like to comment on. Mr. Shields and perhaps Mr. Kauffman will follow

me, but if I may briefly outline those factors I think it may help Your Honors.

Of course Your Honors recall before 1920 the policy of the Interstate Commerce Act was largely of a policing nature to prevent abuses, but a notable change of policy [fol. 212] was made in that year, perhaps due to the demonstration of our dependence on healthy and efficient transportation during the years of the first World War. The new policy was, as the Supreme Court said in the *Dayton-Goose Creek* case, "affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country" by putting the railroads "more completely than ever under the fostering guardianship and control of the Commission." That is 263 U. S. 456 and the quotation at 478. Two of the most important provisions chosen to implement this policy were, first, Section 5, giving authority over unifications, and Section 20(a), giving similar authority over the issuance of securities and it was repeatedly announced by the Supreme Court that those provisions were to be interpreted and applied with a primary eye to the dominant public interest but that does not mean at all, as Judge Dobie pointed out earlier today, that the Commission's eye was to be focused only on public interest. It had a statutory responsibility to see that fair treatment was accorded security holders. As a matter of fact, the Commission recognized that that was an element of the public interest itself as a prerequisite to the maintenance of railroad credit and Congress made that perfectly clear and amended the law in 1940 by directing (quoting from paragraph 2(b) of Section 5) that the terms and conditions [fol. 213] approved by the Commission must be just and reasonable.

The treatment of security holders in a merger is the most conspicuous set of terms and conditions and is thus clearly within the authority so conferred.

So on that first point we submit clearly and by settled law the Commission has administrative discretion to review and approve all terms and conditions of a merger, both in matters of public interest and in matters of relative treatment of securities.

The second point, the scope of judicial review—of course, the Commission wasn't chosen as the administrative agency to execute these policies for any accidental or ill-chosen reason. It was fundamental to the policy of this new

Federal legislation that it be interpreted and applied by a single administrative agency. Otherwise there could never be derived the advantages that flow from a uniform interpretation throughout the country by an expert body continually informed by experience. So for these reasons the Commission's acts under unification provisions or under security issue provisions were immediately subjected by the courts to the same rule that had already grown up governing the reviewing of orders fixing rates, that the Commission's action be final if based on substantial evidence and in accord with legal standards. That has been recognized as the settled law ever since.

[fol. 214] The first application was the *P. & W. Va. Ry.* v. *I. C. C.* and there the Court of Appeals of the District held that the Commission, acting clearly within its jurisdiction, was called upon to exercise its discretion in a matter depending upon issues of fact, and it is elementary that in such proceeding the judgment of the Commission cannot be reviewed or controlled by injunction. The Supreme Court later announced the same rule authoritatively in the *New York Central Securities* case in 1932. Expositions of that doctrine have been in the recent reorganization cases of *Western Pacific* and the *Milwaukee* case in 1943, the *Rio Grande* case in 1946, and again in '47 those doctrines have been reannounced, and to recapitulate in the words of the Supreme Court, so long as legal standards are followed, the judgment of the Commission is final. That was the pronouncement in 1943. Since that time that same standard has been confirmed by the Administrative Procedure Act.

I have only one point left, I believe, and that is that an award of new securities instead of cash is a typical exercise of the administrative discretion left to the expert judgment of an administrative body. Of course, the purpose of all the statutes of this kind is to confide these complicated and varying questions to the single gaze of an administrative body which can adapt its judgment to the varying circumstances of particular situations and we submit with defer-

[fol. 215] ence that it is unsubstantial or frivolous to suggest that the Commission shall be governed by any absolute rule requiring a cash allocation to people who dissent, in a case moreover where the Commission on evidence before it find that the award of new securities given to the same people is intrinsically just and reasonable. Any contention such as that would undermine the operation of the policy

of the Act. I do not think that authorities are needed in support of that assertion, but if Your Honors would permit, I shall very briefly illustrate by two citations. One of them is under the reorganization Act and the other the Public Utility Holding Company Act.

It was argued in the Milwaukee reorganization in 1943 that the holders of the general mortgage bonds, a very small issue with an underlying lien and very richly secured, were in such position that they were entitled to retain their divisional lien in the new capital structure of the reorganized company or be paid out in cash or its equivalent. But the Commission found that they were not entitled to anything more than a fair and equitable award of new securities and the Supreme Court sustained that holding. The Supreme Court said:

> "... where each group is contributing to a new system mortgage separate properties from old divisional mortgages, it is necessary to fit each into the hierarchy of the new capital structure in such a way [fol. 216] that each will retain in relation to the other the same position it formerly had in respect of assets and of earnings at various levels. If that is done, each has obtained new securities, which are the equitable equivalent of its previous rights ... No fixed rule supplies the method for bringing two divisional mortgages into a new capital structure so that each will retain in relation to the other the same position it formerly had in respect of assets and of earnings at various levels. The question in each case is one for the informed discretion of the Commission and"——

the court went on to add, but only, I submit, because of other provisions, of Section 77 of the Bankruptcy Act,——

> "the District Court."

The same philosophy is applied to proceedings of the Securities and Exchange Commission and the courts reviewing orders under Section 11 of the Public Utility Holding Act. As Your Honors know, that embodies the so-called death sentence in which the Commission dissolved unnecessary holding companies and redistributes——

The Court (Judge Dobie): I think that is pretty well settled.

Mr. Gibson: Without taking the time to quote, I will merely mention the holding of a case that I believe to be helpful. It is the holding of the Third Circuit in the [fol. 217] Standard Gas & Electric Company reorganization in 1945, 151 F. (2d) 326 at 329. The ultimate holding there was that a noteholder, even though he was entitled to cash by the very terms of his security, could nevertheless be satisfied by a fair and equitable award of the new securities and that in measuring the nature and extent of the new securities that are adequate for his satisfaction in that way the Commission is exercising its distinctive administrative technique which is not subject to review or reversal by the court if they acted on evidence and in accordance with legal standards. The only question is one of relative value, the relative value of the old security and the relative value of the new, and cash is merely the best medium of satisfaction. It does not present any distinctive or separate legal issue. This fundamental, we believe, is sufficieent to show this court has no authority here to get aside the Commission's order, the only object of this petition.

As an incident of that may I add with relation to statements made to you in the arguments today that mere dissent by a stockholder does not entitle him to any other or different rights than he would have if he had not dissented. The kind of treatment that is fair and equitable for him or just and equitable for him is determined by the rights of the security he holds and not how he happens to be, whether enthusiastic or opposed. His rights and his position are governed by what he owns and that was distinctly [fol. 218] held by the Supreme Court in the second *Rio Grande* decision this year, *R. F. C. v. Denver & Rio Grande*, 328 U. S. 495 at page 535. The quotation says:

> "If a plan gives fair and equitable treatment to dissenters, the elements which make the plan fair and equitable cannot be the basis for a reasonably justified rejection."

The meaning of that language and the context of its use is that a security holder cannot entitle himself under the Bankruptcy Act, which is concerned with fair and equitable treatment, to get something better than what is fair and equitable by dissenting, and the same philosophy applies, we submit to this Act where the words are "just and reasonable." I see no difference between them.

So on that review, if Your Honors permit, we submit for my part of the argument that these considerations are cited as no legal warrant for this attack on the order of the Commission and the stay should be denied on the ground that the petition is without merit and our motion to dismiss should be granted.

In conclusion, may I invite your attention to one further circumstance, the large interests that are concerned in this merger. There are two railroads serving extensive territory; there are 85,000 stockholders of the two companies who have a natural interest to see a speedy establishment of [fol. 219] their rights. But more immediately and more urgently, a dividend is payable to all C. & O. stockholders who are of record on June 6th, Friday, day after tomorrow. If this merger is consummated by an entry of the order of the Virginia Commission on or before Friday, June 6th, the 2800 stockholders of Pere Marquette will receive their dividends, and if the merger is delayed beyond that date there are legal difficulties that may endanger or defeat their right to obtain that dividend because when the merger is consummated we do not know how it can be consummated retroactively. The Virginia legislation prescribes that it shall be effective at the moment of recording in the office of the Clerk of the Commission.

So it is an important transaction where the rights of so many are concerned and we venture to hope that Your Honors will bear that circumstance in mind as governing the time of the decision and our ability to meet that important deadline. I have told the Commission in Virginia and I have made it clear to counsel for the Schwabachers that unless Your Honors otherwise direct, it is our intention, in behalf of the Chesapeake & Ohio and Pere Marquette, to present the merger agreement to the Virginia Commission at ten o'clock Friday morning, June 6th, and it has agreed to hear us at that time.

Mr. Hickey: May I say a brief word? I am sure that the Court has benefitted greatly *greatly* by the very able and detailed discussion of the facts, but I would like to [fol. 220] emphasize that there has been no challenge to the adequacy or sufficiency of the evidence to support the findings in this ase and the pure issue raised by the complaint, as you can see by reading it, is that the Commission has not discharged a duty plainly imposed upon it by statute.

I would also like to bring this one fact before Your Honors

and that is, as you probably appreciate, the standards under reorganization proceedings, bankruptcy proceedings and liquidation proceedings are quite different from the standards imposed on the Commission here by Section 5(2)(B) and there is imposed a greater scrutiny on the part of the administrative body participating in such proceedings where the focus and objective is securities and the way in which they are handled than in a proceeding under 5(2)(b) where the focus and the objective is the Transportation Act and the public interest.

I would like to make that point because there are cases under reorganization proceedings where a much higher standard of care is set forth by the courts than there would be in cases of this character, and, moreover, I can illustrate that very well by pointing to the fact that when the Commission itself acts in a bankruptcy proceeding it is acting as an adjunct of the court. As Mr. Kunkel brought to your attention, it can be brought before the court in an adjudicatory proceeding, quite unlike a proceeding of this sort.

[fol. 221] Mr. Cooper: I would like to concur in the first statement Mr. Hickey made. It seems to me that the issues are being broadened in this case beyond the terms of the complaint that was filed by the plaintiffs.

STATEMENT OF MR. SHIELDS

Mr. Shields: May it please the Court, John Shields is my name and I speak for the Pere Marquette.

Mr. Kunkel made the point that the Commission was without obligation and without power to deal in collateral matters in treating with mergers and I offer the Court this case: *Missouri Pacific Railroad Co.* v. *United States*, 4 F. Supp. 449, which was affirmed in 293 U. S. 524. The Commission in that case said:

> "Any order that we may issue in this proceeding authorizing the acquisition of control as sought must be based upon a finding that such acquisition of control is in the public interest. It is not within our province to construe the Gould-Huntington Agreement or adjudicate the rights of the parties thereunder. The point here at issue is not whether the Gould-Huntington Agreement is in the public interest, but whether the

acquisition of control as sought is in the public interest. The determination of the status of the parties under this Agreement rests with the courts."

The Court in considering that said this:

[fol. 222] "The sole question which the statute referred to the Commission in disposing of such an application as was before it was whether the granting of it was in the public interest. Possibly it may be said that the public has an interest in a party standing up to his contract and observing a court decree. But it is not such a public interest that the statute had in mind."

After citing some cases the Court further said:

"These cases establish not only that the Interstate Commerce Commission, in determining whether it will exercise a power conferred or perform a duty imposed upon it, has no power to take into consideration collateral matters, such as private rights, but also that the courts in an attack made upon its order may have no power to consider same. The sole question is whether the Commission was empowered or required to make the order and had considered the conditions upon which it was empowered and required to make it and determined that they existed. Indeed, the matter can be pushed further. Even if it were conceded that the Texas & Pacific had rights under the Gould-Huntington agreement which the acquisition of control of the Cotton Belt by the Southern Pacific might result in the violation thereof, the Commission had power to make the orders complained of upon its determina-
[fol. 223] tion that the public interest called for such acquisition."

If it please the Court, the Pere Marquette contends here that the Commission was without jurisdiction to grant what the Schwabachers demand; (2) that there is available to the Schwabachers an adequate remedy at law; (3) that irreparable damage has not been shown; (4) that the Commission's order had substantial evidence to support it and may not be reviewed. I will not cover that last point here because that has not been challenged in the complaint.

The unification of the Pere Marquette and the Chesapeake & Ohio has been in contemplation for a good many years. The Chesapeake & Ohio was permitted by the Commission to acquire operating control of the Pere Marquette in 1929 and it is because of that control by the Chesapeake over the Pere Marquette during these years that the Pere Marquette is the railroad it is today. I dare say that except for that the Pere Marquette would have remained what it was—a streak of rust.

Back in 1945 a unification of the Nickel Plate, Pere Marquette and Chesapeake was negotiated. Minority stockholders, as they have since discovered, didn't like the terms and withdrew, with the result that that unification failed. Thereupon the Chesapeake invited the Pere Marquette to merge and an agrement of merger was entered into in February, 1946.

[fol. 224] On June 8, 1945, while the merger and unification was in the air market-wise, Albert Schwabacher bought 450 shares of Pere Marquette preferred stock. That represents Albert Schwabacher's holdings here. Albert E. Schwabacher, Jr., on June 10, 1946, one month after the stockholders' meeting of Pere Marquette at which this merger was approved, purchased 150 shares and he assumes to be here in court protesting against the merger. The balance of the 2100 shares claimed here is made up by 1500 shares held in the name of a broker and it doesn't appear whether those certificates are the same certificates originally issued or whether they were replaced from time to time and it doesn't appear here when they were purchased. Obviously, if they were purchased on June 10, 1946, at the time when Junior bought his 150 shares, they are out of court because they bought after the stockholders' meeting when they sanctioned the merger.

None of the Schwabachers appeared at our stockholders' meeting and protested. They voted their stock against it but they didn't appear and talk against it. Others did. They didn't appear before the Interstate Commerce Commission at the time testimony was taken. They appeared after the proposed report of the Bureau of Finance was presented.

The Schwabachers, each and every one of them that were stockholders of record, received at the time of the Pere Marquette stockholders' meeting in May, 1946, a copy of [fol. 225] the merger agreement and they were supplied

with quantities of literature. As a matter of fact, another stockholder opposed the merger and solicited proxies against the merger, and so the Schwabachers had not only the material sent out by the company but they had the benefit of the propaganda of the protesting stockholders before them. But they did not come in before the Commission, although they knew from the material at hand that this matter was to be submitted to the Interstate Commerce Commission for approval and had to have the approval of that body.

I don't suppose it makes any difference whether a man owns one share or two thousand; he is entitled to be heard. But it does go to the question of whether the complainants here have suffered irreparable damage.

If the Court please, what is the position of the complainants? Mr. Cooper was not very enlightening. It is clear that they do not oppose the merger. They made it clear in all of their submissions to the Commission that they were in favor of the merger. Their objection is that they are not receiving a sufficiently large participation money-wise.

Schwabacher bought this stock in 1945; his son bought it in 1946. The stock held in the name of the broker was bought we don't know when, but obviously it was bought because there was a large accumulation of unpaid dividends and it was purchased and kept on the gamble that some day [fol. 226] that might be paid. We can tell, may it please the Court, from the submissions to the Commission by counsel for Schwabacher, I think, just what their claim is. They want something which was beyond the power of the Commission to give them. The generous appraisal provisions of the Virginia Code won't satisfy them. If we offered them today a very generous amount for it, which we wouldn't and can't because we think that all stockholders must be treated and should be treated alike, they wouldn't be satisfied with that. They want nothing more or less than par plus accumulated dividends, the accumulated dividends amounting to about $75 or $76 a share. That is what they want and they don't want anything else. That is what the Schwabachers are gambling on in this case.

The Court (Judge Dobie): Does it appear what they paid for that stock?

Mr. Shields: No, it doesn't but the market at that time was fair to middling in their favor.

The Court (Judge Dobie): What do you mean by that?

Mr. Shields: They are in good shape. Their purchase price shows them a profit.

The Court (Judge Dobie): As much as $75?

Mr. Shields: Oh, yes. I don't know what they paid but they paid less than they could have sold their stock for a good many times since this merger began.

Here is what was said before the Commission: "An [fol. 227] attempt is made by the merger agreement to apply the law of Virginia, notwithstanding that no such instrument could modify shareholders' rights or confer jurisdiction, and the applicants are mentioned in the report as suggesting the same as a possible course of action for the Commission, although it is elementary that neither the Commission nor all the parties could confer or transfer jurisdiction. Despite the intimation in the report that Michigan law does not give to dissenting stockholders any rights of appraisal, the Pere Marquette charter here involved provides that 'in the event of any liquidation, dissolution, or winding up, whether voluntary or involuntary, of said corporation, the holders of the preferred stock shall be entitled to be paid in full out of the assets of said corporation the par amount of their shares and all accumulated dividends from and after January 1, 1919, unpaid thereon before any amount shall be paid out of said assets to the holders of the common stock, but the holders of the preferred stock shall not be entitled to any other or further distribution of assets' and it is admitted that there are substantial arrearages on this stock and that the book value is 175 but actually the preferred equity on the date given was 176. That is what the Schwabachers are seeking.

During his oral argument before Division Four Mr. McFarland said this——

The Court (Judge Dobie): Was he counsel for the [fol. 228] Schwabachers?

Mr. Shields: Yes, sir. "It is plain enough, upon the applicant's own admission that the shares of railroad corporations are not held subject to appraisal and a vote of the majority in the State of Michigan. While we do not for a moment concede that this Commission may commit us to the expense of litigation in state courts, if there is any forum, any other forum than the Interstate Commerce Commission, it must be the state or Federal courts of Michigan where these rights were created, where Marquette has its

home and still exists and where there are remedies in equity entirely applicable to this situation."

That was the position which Mr. McFarland in behalf of the plaintiffs here took before the Interstate Commerce Commission. The only difference between Michigan and Virginia on the matter of remedy is that in Virginia there is a special statutory type of thing called an appraisal statute and in Michigan in railroad matters you use the common law equity suits.

"Then we come to the question of whether upon a merger such as this the dissenting preferred shareholders are entitled to be paid either par plus accrued in cash or in securities readily convertible into cash. The Marquette charter provides for such payment in the event of any liquidation, dissolution or winding up, whether voluntary [fol. 229] or involuntary. The proposed report, as the applicants have said, contains some language about the nature of the transaction. It is not entirely a matter of the report but the report is quoting some of the documents in the case. Moreover, the Michigan statute provides in such a situation as this that the corporation that is to survive, in the case of a merger, in such a situation, in other words, all of the rights shall be deemed to be transferred to and vested in such surviving corporation."

"You might look again at the law of Michigan and particularly to the theory of the Michigan law as expounded by the only tribunal entitled to say the last word and that is the Supreme Court of Michigan. They say that the stock dividends and issues of stock in proportion of that previously held by shareholders must stand on the same footing with the original stock. The arrangement allowing consolidation very clearly was intended by the law to leave the Michigan company in its original position as to stock. The Michigan investment can never be less than what it was in the first place."

The Interstate Commerce Commission considered this claim of the plaintiffs, that is, that they were entitled to par, plus accumulated dividends as a matter of contract. They claimed that the articles of association of the Pere Marquette containing what I just read provide that in case of liquidation, dissolution or winding up, the preferred share- [fol. 230] holders participate before the common, that that constitutes a contract on the part of Pere Marquette that in

the case of merger the preferred stockholder will receive par plus accumulated dividends.

The Commission said this:

> "Whether dissenting stockholders, as members of a class created by the merger, are entitled to better treatment under their charter contract with the Pere Marquette is a question not within our province to decide, *Otis & Co.* v. *Pennsylvania R. Co.*, 61 Fed Supp. 905."

If Your Honors please, what the plaintiffs want here is to have themselves set apart as a class by themselves to be distinguished from other stockholders. We didn't have any minority stockholders in this case. The Commission undertook to determine whether the terms of exchange were fair and just to all stockholders.

Where one corporation undertakes to acquire control of another the interests of minority stockholders often appear. For instance, the control may be such as to divert traffic and reduce earnings. There the minority stockholders are entitled to protection and it is the duty of the Commission to furnish that protection. But here it was the duty of the Commission to determine whether the terms of exchange agreed upon, first, by the boards of directors of the two [fol. 231] companies, later sanctioned by the stockholders of the two companies, all in separate meetings, were, first, in the public interest, were just and reasonable, and certain other things that we are not concerned with here.

Mr. McFarland, in his petition for rehearing said this: "The Division had all of the necessary information and details to determine the rights of dissenting groups. Their rights are determined not by negotiation or bargaining but by charter which cannot be altered or changed by the Commission, the legislature or the courts."

That is the position of the plaintiffs here. They intend ultimately to go into court in an action ex concractu to recover as a contract right, or seeking to, the par value of their stock plus accumulations. We submit that the Interstate Commerce Commission was without any obligation and was without any power to make any such arrangement for the particular benefit of these intervenors.

The Michigan statutes, Your Honors, in respect of railroad merger, require this: The Court will please have in mind

that we have two statutes in Michigan. One statute covers the organization of the general corporations, industrial corporations, but railroads are excepted from the operation of that particular statute and they are organized and exist by virtue of a different statute. Under the provisions of that statute if one railroad consolidates or unifies with an-
[fol. 232] other, the merger must be sanctioned by the stockholders. In this particular case the Chesapeake & Ohio held slightly less than 70 per cent of the common stock of Pere Marquette but they owned about 12 per cent, maybe 14 per cent, of the proferred stock and they owned none of the prior preferred stock. In order to carry out the merger it had to have the favorable vote of the majority of each class of stock. To put it another way, unless 51 per cent of the outstanding stock was brought to the meeting and voted favorably for the merger, it failed. The preferred stock or the prior preferred stock, either one, could have defeated the merger. The Commission, notwithstanding the fact that if there was to be a merger or not rested in the preferred stockholders and in the hands of the prior preferred stockholders, said that because the Chesapeake & Ohio does in fact control Pere Marquette we are going to give this proposed merger and the exchange terms a special scrutiny, and they did, and after weighing all of the evidence which was submitted, they found the terms just and reasonable.

If it please the Court, everyone who buys a share of Pere Marquette stock in Michigan buys it knowing that there is a likelihood that the railroad will at sometime or other, somehow or other, become merged or consolidated with another railroad. That is written into the charter of the railway. It is part and parcel of the contract between
[fol. 233] the company and its stockholders. When Schwabachers bought their stock they knew, and I venture to say they hoped, that a merger would one day occur with the Chesapeake & Ohio. The fact that [illegible]unior bought his stock after the stockholders' meeting [illegible]idences that. If a stockholder who holds a share of stock is dissatisfied to go along with the great majority, he can sell his stock for which there is an open, free and ready market, but the Schwabachers are gambling on something else. As they were free to say before the Commission, they are going into Michigan and they are going to institute a suit and claim that there was a contract existing between the Pere Marquette and the Schwabachers, under the terms of which Schwabacher is

entitled to receive par plus accumulations because there is not a merger at all, that it is a dissolution, liquidation and winding up of Pere Marquette.

The Court (Judge Dobie): Are we concerned in any way with what the Schwabachers are going to do when they get back to Michigan?

Mr. Shields: Yes, I think so, Your Honor.

The Court (Judge Dobie): You think that has some bearing on the equities of this situation?

Mr. Shields: I think so. I mentioned that I was not going into the subject of dissolution. I was about to say that whether it does amount to dissolution, a merger is now before this Court and it is something which will have to be [fol. 234] determined later.

The Court (Judge Dobie): Is that the end of the case for the defendants?

Mr. Gibson: Yes, Your Honor.

STATEMENT OF MR. TURNEY

Mr. Turney: If Your Honors please, Turney is my name and I represent about five or six minority stockholders. We have filed a petition for intervention as of right. We own the same stock that the plaintiffs do and about ten times as much. We have assented to the plan and are very anxious for it to be consummated before the 6th because if the plan is not consummated on the 6th the stockholders of the Pere Marquette who have assented will lose some $234,000 in dividends which cannot thereafter be recovered.

The Court (Judge Dobie): You want this plan to go through?

Mr. Turney: Right now, and it means $8500 on Friday morning to my clients on this dividend.

The Court (Judge Dobie): As the American soldiers said in the use of "tout d' suite"—"the touter the suiter."

Mr. Turney: I want to say this on one question that has been discussed. I am not going to reiterate the arguments that have been made here. This is a court of equity. You are called upon to exercise one of the great powers of a court of equity, the power of injunction, and, when you are called upon, one of the cardinal principles is a balancing [fol. 235] of the equities. What are the equities on the other side? You have 98 per cent of the stockholders who have come in here wanting to go through with this transaction. You have two per cent who do not say the trans-

action is bad; they want, they like it; but they want to hold it up unless they are paid.

My clients are not simple. They are business men. They accepted this trade.

The Court (Judge Dobie): You don't mean to say the Schwabachers are simple?

Mr. Turney: Not at all—quite the contrary. But I do say that my people were not suckers that were taken in by the C. & O. or the Pere Marquette. They got a good deal on this trade. It is not only a fair exchange but we think we got the best of it. Be that as it may, we submit that by an injunction here, without any showing of harm at all, and no injury has even been pleaded, we are to be deprived of the fruits of our contract. So I submit that just under the Hornbook rules of equity, regardless of what you do ultimately in the final decision here, the plaintiffs can't be hurt; they still have their remedy to get whatever they can; but we can and we will be hurt.

One other thought in closing: If there is to be an injunction, then we submit that there should be a bond here sufficient to take care of this dividend of $235,000 that is going to be paid and will be lost. We think that is just plain [fol. 236] equity, that these people can't come in here and imperil the rights of all their associates with this proceeding, without assuming the risk of it. So therefore we ask that if there is to be any stay that it be conditioned upon a bond.

The Court (Judge Dobie): How large a bond would you suggest?

Mr. Turney: $250,000. That is about $15,000 in excess of the actual dividend.

These figures and facts are here by affidavit. The pleading which I filed contained all of them and are verified by one of my clients.

I realize I am impinging too far on the time of the Court——

The Court (Judge Dobie): Not at all.

Mr. Turney: But there is this other matter which I submit should appeal to a court of equity. This is not an unusual case where there is a small dissenting stockholder to a merger. There have been these kind of cases in commercial corporations, in railroads, manufacturing corporations, for a hundred years and you will find—at least I have in the short time that I have had to investigate this question

—that the courts uniformly have said when they came to them to stop the merger, "We will not stop the merger if any loss to you can be prevented by the consolidating company insuring you against loss." I can give Your Honors [fol. 237] any number of cases where the courts have said that if the defendant will indemnify the plaintiff against loss by reason of his stock that no injunction will issue to stop the merger. The C. & O. has been pointed out here as certainly a solvent corporation and I think that is somewhat of an understatement, but certainly the rights which these gentlemen admit they have and which every lawyer who has spoken here has said they have and that the Supreme Court has said they have, both at common law and in equity, to secure whatever the value of their interest in the Pere Marquette is, and they are entitled to get that, the C. & O. is able to meet. It is perfectly solvent. They can't be hurt. There can't be any irreparable damage, and in the last analysis there couldn't be any if the C. & O. would give as they have given here today, their assurance that they stand ready to indemnify the plaintiffs against any loss by reason of the consummation of this transaction on Friday morning.

Mr. Gibson: I merely wanted to ask the Court's permission to say that so far as the last statement of counsel goes, we rest on the words we used and we ask that we not be held to assenting to the words he used in clarifying the commitment of the C. & O.

STATEMENT OF MR. HITT

Mr. Hitt: If Your Honors please, I filed a petition to intervene and I haven't a great deal to say. Sterling Grace & Company are investment bankers, Connecticut Mutual [fol. 238] Life Insurance Company and Keystone Custodian Funds did not get their stock from Grandpa or Grandma or old man Pere but they bought it with the idea of getting in the Chesapeake & Ohio. They bought it as a good proposition. They thought that consolidation was eventually coming and they would be able to get terms that would be——

The Court (Judge Dobie): You are in favor of the merger?

Mr. Hitt: Strongly in favor of the merger. The longer the merger is delayed the more we lose. We think the trade made is a very good trade. We don't want to see

that trade upset. We don't want to have it deferred. We want to use the dividends in the meantime.

There is one position that it seems to me has not been brought out too clearly today, that the Commission in its duties to approve mergers upon reasonable terms and conditions must look at it from the standpoint not only of the company being merged but from the standpoint of the company doing the merging. In other words, it would not be fair to require the Chesapeake & Ohio and it would not be in the public interest to pay more than the property is worth that is being acquired. So you have got to look at it from that point of view and it seems to me that has not been brought out as clearly as it should.

There is no contention here, as I understand it, that the [fol. 239] value put upon the Pere Marquette by the Commission is unreasonably low. The complainants in this proceeding apparently are taking the position that they have a contract, that they are entitled in liquidation to 100 cents on the dollar of original par investment plus accumulated dividends. That is not what it is worth now and the problem before the Commission is to determine what the properties are worth at the present time and these investors who hold some 20,000 shares of stock, such as I represent, think that they are getting value for it. They are very well satisfied with the deal and they don't want it reopened because they think it is fair to them and it is fair to the Chesapeake & Ohio and they don't want to take any chances of having it upset, to say nothing of the fact that they have been losing by the delay that has already occurred and they will lose the dividends they are going to get if the plan is longer deferred.

REPLY STATEMENT OF MR. COOPER

Mr. Cooper: Your Honors, this will be very brief.

The Court (Judge Dobie): I would like to ask you one thing. You made the statement at the start that they did nothing for the dissenting stockholders. I would like for you to explain to me what you mean by that in the light of what has been said. They gave them something didn't they?

Mr. Cooper: Not as dissenters.

The Court (Judge Dobie): I understand. You think they should have put on gowns and hoods and conferred the [fol. 240] degree of D. S. on them—Dissenting Stockholder—and give them something they didn't give somebody else? Is that your contention?

Mr. Cooper: I am merely claiming they should have given them something.

The Court (Judge Dobie): Because they are dissenting?

Mr. Cooper: That is right. I can't see how the Commission can perform its duties——

The Court (Judge Dobie): In other words, the Commission ought to say, "We think it is fine but if you don't think it is fine, come in and dissent; you have got nothing to lose, Boys, and you have got everything to gain; we always give dissenters something. Hail to the dissenters!" Is that your position? It is a strange one if it is, Mr. Cooper. If you can get the Supreme Court to sustain it you are going to find yourself on the front page of every paper in America, and maybe you will.

Mr. Cooper: Your Honor, I think dissenting shareholders are a part of the minority interests which the courts have said should be protected.

The Court (Judge Dobie): Not because they are dissenters.

Mr. Cooper: I can't see how the Commission can determine the liability of merged companies until the outstanding obligations of dissenters are handled in some way.

[fol. 241] The Court (Judge Dobie): Here are six hundred stockholders. Four hundred are perfectly well satisfied and the other two hundred come in and dissent and they say the reason they dissent is because their grandfather was born in Scotland. Did you have to give them something for that? I understand you to say, and I want to get you clearly on that, that whether his grounds are good or bad, whether he is a Solomon or an unmitigated ass, as soon as he brands himself as a dissenter, then you have to stand him aside and give him preferential treatment?

Mr. Cooper: No, sir, I do not say that, Your Honor. I say that he is entitled to be given some sort of treatment, whether it is equal, better or less. He is entitled to some sort of treatment. He is entitled to recognition of his liability.

The Court (Judge Dobie): He is entitled to be heard?

Mr. Cooper: Yes, and I think his rights should be determined. I think the fallacy up to this point in most of the arguments of counsel for the defendants has been that it has been assumed that this is a gigantic task that is going to be thrust upon the Interstate Commerce Commission so that they can't perform their duties. As a matter of fact,

it is a very simple matter. It is the merger agreement itself that settled this matter as to what the dissenters were entitled to. The Commission wouldn't have to bat an eye to [fol. 242] handle it. The fault rests in the merger agreement itself, and in some of these cases that I have cited before the Interstate Commerce Commission what happened? When these applications come before them they look them over and if they feel that the minority interests are not protected they send them back and say, "Do the job that you were supposed to do in the first place," and that is no burden on the Commission. It doesn't have to adjudicate thousands of claims. The whole merger agreement should have been buttoned up from the beginning and I would like to explain exactly what I meant—and I think Mr. Hickey put his finger on the problem that as dissenters, entirely apart from the question of what they could get if they wanted to go along with the agreement—there is plenty of that in here—but they want none of the agreement; they are staying outside. What happened? Sometime or other the Pere Marquette is going to have to satisfy those claims. I don't know what they are. I don't know how the court is going to decide and I am not sure that we can get before a court and that is one thing I would like to make plain. When someone says to me that their jurisdiction is primary, plenary and exclusive, I don't think I can take that matter up before another court, and that is precisely what the Commission has ruled in this case. They said that their jurisdiction is primary, plenary and exclusive.

The Court (Judge Dobie): That is as to matters that are properly before them?

[fol. 243] Mr. Cooper: We think that one of the matters properly before them are the rights of the dissenting shareholders and we had to pursue our remedies there.

The Court (Judge Dobie): Nobody can criticize you for asking for what you think you are entitled to before the Commission and asking it from any court.

Mr. Cooper: There is one other point I would like to make on this question of the balancing of the equities. I will be quite frank and I believe that Judge Hutcheson will confirm this statement. When I came to him to ask for the assembling of this Court I did so as much to protect the rights of others as I did to protect our own rights. I felt that this Court should have an opportunity at least to s-ay any

affirmative action which might result in injury to innocent third parties.

The thing I have in mind is if the Court, with the evidence before it, now feels that there is not going to be any injury, that is another matter, but due to the short period of time involved, the three-day holiday when we could not get service on parties, I felt that the safe thing to do was to call it to Judge Hutcheson's attention and to let the Court have an opportunity——

The Court (Judge Dobie): Nobody questioned that you had a perfect right to do that.

Mr. Cooper: It is true, as Mr. Hickey, says, that these decisions speak of minority interests and the protection [fol. 244] of minorities. In this case who are the minority interests? They are common stockholders; they are preferred stockholders; they are prior preference stockholders who did not agree to vote for the merger. In that group is also a group which we can designate as dissenters. They have rights too.

We think that the contract that was negotiated in Michigan under the Michigan statute is a perfectly valid one and it says that on liquidation and winding up they shall be entitled to the par value of their stock plus accumulated dividends, and if the Commission had said that we as dissenters were entitled to less than that I am not complaining or saying that we would have had this appeal. The thing I am saying is the Commission says nothing. It says nothing whatsoever.

The Court (Judge Dobie): It says what you get.

Mr. Cooper: Not as dissenters. We want to have nothing to do with the plan. We want a settlement of some kind.

The Court (Judge Dobie): You are objecting to the merger?

Mr. Cooper: No, sir, and as evidence of that——

The Court (Judge Dobie): You think it is a fine merger provided your men get 100 per cent of all their claims?

Mr. Cooper: In this case all that we are saying is that the Commission failed to make any provision whatsoever of any kind, character or description for the dissenting [fol. 245] shareholders and that remains an outstanding obligation on the part of either the Pere Marquette or the C. & O. and the C. & O. presumably will assume its liabilities and then it becomes a Virginia corporation and we have our problem there as to whether we sue in Virginia or

Michigan and as to whether we can pursue our remedies at all against the Pere Marquette. But the point is, as I tried to emphasize before, I am not saying we should get any better or any less or more. The fact is we were not given assurance of anything—anything whatsoever—and it is an outstanding obligation that someone is going to have to assume. As the Commission points out, it can run as high as ten million dollars and the Commission completely ignores the problem and says it will have to be settled in court somewhere.

How can they perform their duties? How can they approve this until they know what the financial arrangements are going to be? I think that is what the Commission has meant by what it has said in the past and I think that is what the Federal courts have meant when they talked about minority stockholders.

There is one other point: Everybody seems to be agreed now that there is an adequate remedy that we have in the state courts. I am not sure. I think after Your Honors have read the written opinion you will have some doubt too.

The Court (Judge Dobie): The Commission didn't [fol. 246] undertake to pass on that. They didn't say what your rights are or what they are not. Isn't that correct? They said, "Whatever they are, this position doesn't impair them." Is that a fair statement?

Mr. Cooper: I hope it is. Everytime I read the decision——

The Court (Judge Dobie): I sued the word "fair" in the sense of "correct."

Mr. Cooper: I hope that that is true but, as I say, when you read the preface to this first statement in which the statement is made that their jurisdiction over these matters —and that, of course, includes the settlement of these claims—is primary, plenary and exclusive, then I start to get worried about my state remedies.

The Court: (Judge Dobie): They are right strong words.

The Court (Judge Barksdale): If you have got any rights that declaration will not preclude you from asserting them in the Virginia courts.

Mr. Cooper: We happen to have a Michigan contract and I feel quite confident that we would like to insist on our Michigan contract and the statutes of Michigan are quite clear on this matter and I have no doubt——

The Court (Judge Dobie): I am not familiar with the

Michigan statute but if it is, it is one of the very few statutes that are clear.

[fol. 247] Mr. Cooper: We think we have properly interpreted it, Your Honor. I think that is all unless you have any further questions. I hope I have made my point clear.

The Court (Judge Dobie): I think you have made it perfectly clear. We will take a recess for ten minutes and come back.

(A short recess was taken.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court (Judge Dobie): Gentlemen, we have considered this matter of the temporary stay, which of course should be decided, and we have unanimously come to the conclusion that the stay be not granted.

We are willing to decide this case on the merits if you gentlemen wish it. I believe Mr. Cooper said he had something else that he wished to submit before we could decide it on the merits and, if so, we will be very glad to have him submit that, or anything the other side wishes to submit.

I might say that it is a little difficult to get these three-judge courts together in this part of the world. I don't mean to criticize you, Mr. Cooper; you are perfectly right in asking for one, and it is your duty as a lawyer and you did it manfully and well. It so happens that the Judicial Conference for the Fourth Circuit is going to be held in Asheville next week and Judge Barksdale, Judge Hutcheson and I will be at that conference and we will have ample opportunity there to confer and consider this. How long do you want, Mr. Cooper?

[fol. 248] Mr. Cooper: I am not sure how this could be done. It was the very thing that I was afraid of. There has been a lot of testimony given here today. Mr. Gibson gave us a long story on the history of this merger and the various interests that were involved and Mr. Shields told us a lot about Mr. Schwabacher. We have no evidence on that.

The Court (Judge Dobie): That is not evidence; just the statements of counsel. That is not testimony.

Mr. Cooper: The only other thing which I think you would need, which has been fully covered here, would be the agreement of merger. I don't know whether counsel for defendants will agree with me on that or not but it

seems to me that in order for you to look at what the applicants took to the Commission and then to look at the decision of the Commission as to what they did you will have the whole story, but until you have those two documents——

Mr. Gibson: We will supply those.

Mr. Hickey: The United States and the Interstate Commerce Commission, the only defendants in this case, will agree to that. The intervening defendants have already agreed.

The Court (Judge Dobie): So the only thing you wish submitted then is this merger agreement and you have copies of that that you can give us?

Mr. Gibson: I have one, Your Honor. I can supply tomorrow any number. At the moment I have only one. May [fol. 249] I offer instead of the agreement of merger (the only copy I have is a signed counterpart) a copy of the company's statement to the C. & O. stockholders which includes the merger agreement?

Mr. Cooper: That is satisfactory.

The Court (Judge Dobie): I understand that is all you want before us?

Mr. Cooper: Yes. There is one other statement I wish to make, if I may.

The Court (Judge Dobie): You certainly may.

Mr. Cooper: In the event the Court rules that we have no standing to bring this proceeding and to obtain a permanent injunction enjoining the order, if the Court is of the opinion, as I am, that you would not be passing upon our rights in the state courts, I would earnestly request that that be included in the Court's decision, both that you do not interpret the Commission's decision as deciding our rights under state courts—and I say that because of the language of the opinion—"primary, plenary and exclusive"—and, secondly, that in reaching your decision on our bill that you would not be interpreting any rights that we would have in the state courts.

The court (Judge Dobie): I understand from the other side that you all expressly maintain that, do you not?

Mr. Hickey: We do, Your Honor. The United States [fol. 250] takes the position, as Judge Barksdale put it, that the Commission couldn't foreclose that right anyway, but if the decision is in our favor and we are directed to prepare the order and decree for the Court, we will be glad to include such a statement.

Mr. Gibson: I have already so stated in argment.

The Court (Judge Dobie): I know you did. You stated it very clearly and very forcefully.

Mr. Gibson: We also submit for the case on its merits our motion to dismiss.

Mr. Hickey: In order to save time, since we filed no pleading, this proceeding being for a temporary stay, will the Court permit the United States and the Interstate Commerce Commission to join in the motion to dismiss filed by the railroads?

The Court (Judge Dobie): Is there anything else, Gentlemen?

Mr. Hickey: Does the Court desire any order prepared with respect to the decision made here today?

The Court (Judge Dobie): I think it would be well if you prepare that order and submit it to Mr. Cooper.

Mr. Gibson: May we have the privilege of seeing it before it is submitted?

The Court (Judge Dobie): Yes. I would like all of you to see it. Suppose you submit it to all of them and send [fol. 251] it to [illegible]r. Moran.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 252] IN UNITED STATES DISTRICT COURT

I Concur. (Sgd.) A. D. Barksdale, U. S. Dist. Judge

ALBERT E. SCHWABACHER, ALBERT E. SCHWABACHER, JR., James H. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, John L. Schwabacher, Plaintiffs,

versus

UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION, Defendants

(Argued June 4, 1947)

Before Dobie, Circuit Judge, and Barksdale and Hutcheson, District Judges

Opinion—Filed June 14, 1947

DOBIE, Circuit Judge:

This is a civil action brought by plaintiffs, owners of 2,100 shares of 5% cumulative preferred stock of Pere Marquette Railway Company, to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission approving the merger of the properties and franchises of the Pere Marquette Railway Company into the Chesapeake and Ohio Railway Company for ownership, management and operation.

At a hearing in Alexandria, Virginia, before the three-judge court, we denied the temporary stay sought by plaintiffs. The case is now before us, upon a motion of defendants to dismiss, on its merits. We think this motion must be granted.

Plaintiffs do not seek to set aside the merger, nor do they deny that the merger is in the public interest. They do claim, however, as set out in their complaint: "Failure to include protection for plaintiffs as dissenting shareholders, [fol. 253] as a distinct class created by the merger is contrary to law and a direct violation of the Commission's statutory duty to impose just and reasonable conditions for the protection of all interests involved."

The Transportation Act of 1920, (as amended) Section 5, (49 U. S. C. A. § 5), requires that the terms and conditions of the merger be "just and reasonable." The Commission filed a long and elaborate opinion dealing with all the rele-

vant issues in this case. One peculiarly pertinent paragraph is as follows:

> "Accordingly, considering the Pere Marquette's investment according to its books, other property values, the Company's history as to earnings, its future prospects, and the market appraisal of its stocks, all as set forth above, we find that, as to the stockholders of both parties generally, the proposed ratios of exchange, stock issues and assumptions of indebtedness, are just and reasonable."

Our conclusion is that this finding is within the powers of the Commission, it is based on substantial evidence, and is in accord with accepted legal standards. We think the Commission fully complied with all its statutory duties. That finding is, therefore, binding on us.

Reduced to its lowest terms, the case of the plaintiffs here seems to be based on the theory that dissenting stockholders (quite apart from any merit in the grounds of dissent) are entitled to preferential treatment, more favorable than the treatment accorded to stockholders of the same class (holding the same securities) who did not dissent but agreed to the conditions in the merger agreement; and, as a consequence, if the Commission does not grant such preferential treatment to the dissenting stockholders, a three-judge district court is justified in setting aside or modifying the order of the Commission. We know of no case sustaining this (to us) novel principle. We think, further, this theory has no support in practical economics or in commercial ethics.

As we read the opinion of the Commission, it did not attempt to pass upon what rights, if any, dissenting stockholders might have under the laws of the several States. It specifically left Pere Marquette and Chesapeake and Ohio "free to settle controversies with dissenting stockholders through negotiation and litigation in the courts." We adopt a like course. Nothing in our opinion is to be interpreted as in any way determining, affecting or prejudicing these rights, whatever they may be.

The motion of the defendants is granted and the civil action of the plaintiffs is dismissed.

Dismissed. 6-12-47.

I Concur. (Sgd.) Sterling Hutcheson, U. S. District Judge.

[fol. 254] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING TEMPORARY STAY—Entered & Filed June 4, 1947

This cause having come on for hearing upon plaintiffs' application for a temporary stay or suspension of an order of the Interstate Commerce Commission dated April 1, 1947, in a proceeding entitled "Finance Docket No. 15228, Pere Marquette Railway Company Merger, Etc.", before the undersigned sitting as a duly constituted court of three judges as required by the Urgent Deficiencies Act of October 22, 1913 (28 U. S. C. P47), and all parties in interest having waived the required statutory notice of hearing and agreed that the motion should be heard upon three days notice, and the Court, upon consideration of the pleadings filed herein and the arguments of counsel, having concluded, found and determined that plaintiffs' application for a temporary stay or suspension of the aforesaid order of the Commission should be denied, it is therefore,

Ordered, Adjudged, and Decreed, that the prayer of the complaint that a temporary stay or suspension of the order of the Interstate Commerce Commission dated April 1, 1947, be issued and entered pending final determination of this action be, and it is hereby denied.

This 4th day of June, 1947.

(Sgd.) Armistead M. Dobie, United States Circuit Judge; (Sgd.) Sterling Hutcheson, United States District Judge.

(Sgd.) Alfred D. Barksdale, United States District Judge.

[fol. 255] IN UNITED STATES DISTRICT COURT

Civil Action No. 713

ALBERT E. SCHWABACHER, ALBERT E. SCHWABACHER, JR., James H. Schwabacher, May K. Schwabacher, John L. Schwabacher, and Ethel S. Sokolow, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINAL JUDGMENT—Entered & Filed June 16, 1947

This action having come on for hearing on the 4th day of June, 1947, at Alexandria, Virginia, before a statutory Court composed of three judges, upon the pleadings filed herein, and the arguments of counsel, and the Court having duly considered the same, and having filed its opinion herein on June 14th, 1947, it is

Ordered, Adjudged, and Decreed that the above-styled action be, and the same is hereby, dismissed.

(Sgd.) Armistead M. Dobie, United States Circuit Judge; (Sgd.) A. D. Barksdale, United States District Judge; (Sgd.) Sterling Hutcheson, United States District Judge.

June 16, 1947.

[fol. 256] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed July 22, 1947

To the Honorable Armistead M. Dobie, Circuit Judge; A. B. Barksdale, District Judge, and Sterling Hutcheson, District Judge, Comprising Said Court:

Now come Albert E. Schwabacher, Albert E. Schwabacher, Jr., James M. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, and John L. Schwabacher, plaintiffs in the above-entitled and numbered cause, and conceiving themselves aggrieved by the judgment made and entered by the above name Court in the above-entitled cause on the 16th day of June, 1947, wherein the said Court consisting of Armistead

M. Dobie, Circuit Judge; A. D. Barksdale, District Judge, and Sterling Hutcheson, District Judge, under Sections 24, 208, and 209 of the Judicial Code, dismissed plaintiffs' petition to enjoin, set aside and annul an order of the Interstate Commerce Commission theretofore rendered on April 1, 1947, do hereby petition the Court for an appeal to the Supreme Court of the United States from said final judgment and decree, the reasons for which are set forth in the assignments of error which is filed herewith.

Plaintiffs herewith tender a bond in the sum of five hundred dollars, conditioned to pay all costs herein, and pray that the same be accepted and approved. Plaintiffs further pray that a citation issue and a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

This 22 day of July, 1947.

Robert M. Cooper, McFarland and Sellers, 1302 Eighteenth Street, N. W., Washington, D. C.; William M. Blackwell, Shewmake, Gary, Hardy and Goddin, State Planters Bank Building, Richmond, Virginia, Counsel for Plaintiffs.

[fol. 257] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Entered and Filed July 22, 1947

This day this cause came on for hearing on the application of plaintiffs in the above-entitled and numbered cause, for an appeal to the Supreme Court of the United States from the final judgment rendered in this cause by a specially constituted Three Judge Court, dismissing the plaintiffs' complaint to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission dated April 1, 1947, such final judgment being rendered on June 16, 1947.

And it further appearing that the plaintiffs have tendered a bond in the sum of five hundred dollars, conditioned according to law, which bond is a sufficient bond, conditioned to pay costs of this appeal.

It is hereby ordered, and adjudged and decreed that this appeal is hereby allowed and that a citation issue return-

able in thirty days from the date hereof. It is further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States.

(S.) Sterling Hutcheson.

Dated 22 day of July, 1947.

[fol. 258] Cost Bond on Appeal for $500 approved and filed July 22, 1947 omitted in printing.

[fol. 259] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed July 22nd, 1947

Plaintiffs file the following assignments of error on which they will rely upon their appeal to the Supreme Court of the United States from the judgment of this Court entered the 16th day of June, 1947.

The Court erred:

1. In granting defendants' motion to dismiss the complaint.

2. In failing to perpetually enjoin the order of the defendant Interstate Commerce Commission dated April 1, 1947.

3. In holding that the plaintiff's rights were protected by the said order of the defendant Interstate Commerce Commission.

4. In failing to protect the rights of plaintiffs under the order of the defendant Interstate Commerce Comission by requiring defendant Interstate Commerce Commission to set aside its order of approval and to take appropriate action in the premises.

5. In holding that the findings of the defendant Interstate Commerce Commission to the effect that all shareholders were given just and reasonable treatment was based upon substantial evidence and in accordance with the Commission's statutory duty to plaintiffs.

6. In failing to hold that the finding of the Commission to the effect that the assumptions of indebtedness were just

and reasonable was without the support of substantial evidence.

[fols. 260-286] 7. In holding that the jurisdiction of the Interstate Commerce Commission to determine the rights here involved was not plenary and exclusive.

8. In holding that plaintiff's only remedy, if any, was by way of independent litigation in the courts.

9. In holding that plaintiffs were seeking "preferential" treatment before the Commission.

Wherefore, plaintiffs pray that the said judgment be reversed and a judgment rendered in favor of plaintiffs and that plaintiffs have their costs on this appeal.

Robert M. Cooper, McFarland and Sellers, 1302 Eighteenth Street, N. W. Washington, D. C.; William M. Blackwell, Shewmake, Gary, Hardy and Goddin, State Planters Bank Building, Richmond, Virginia.

[fol. 287] IN UNITED STATES DISTRICT COURT

NOTICE TO ATTORNEY GENERAL OF STATE OF VIRGINIA—Filed July 22, 1947

To the Honorable A. P. Staples, Attorney General of the State of Virginia:

Pursuant to the Urgent Deficiencies Appropriation Act of October 22, 1913, Chap. 32, 38 Stat. 219, 220, you are hereby notified that Albert E. Schwabacher, Albert E. Schwabacher, Jr., James M. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, and John L. Schwabacher, the above named plaintiffs, have taken an appeal to the Supreme Court of the United States from the final decree of the specially constituted United States District Court, entered herein June 16, 1947, denying the prayer of said plaintiffs that an Order of the Interstate Commerce Commission, Dated April 1, 1947, approving an application for merger of the Chesapeake & Ohio Railway Company and the Pere Marquette Railway Company, be enjoined, set aside and annul-ed; and that the Order allowing said ap-

peal makes the same returnable in the Supreme Court of the United States thirty days from the date hereof.

Dated at Richmond, Virginia, this 22 day of July, 1947.

(Sgd.) Robert M. Cooper, McFarland and Sellers, 1302 Eighteenth St. N. W., Washington 6, D. C.; (Sgd.) Wm. M. Blackwell, Shewmake, Gary, Hardy & Goddin, State Planters Bank Building, Richmond, Virginia, Counsel for Plaintiffs-Appellants.

[fols. 288-295] IN UNITED STATES DISTRICT COURT

NOTICE TO ATTORNEY GENERAL OF STATE OF MICHIGAN—Filed July 22, 1947

To the Honorable Eugene F. Black, Attorney General of the State of Michigan:

Pursuant to the Urgent Deficiencies Appropriation Act of October 22, 1913, Chap. 32, 38 Stat. 219, 220, you are hereby notified that Albert E. Schwabacher, Albert E. Schwabacher, Jr., James M. Schwabacher, May K. Schwabacher, Ethel S. Sokolow, and John L. Schwabacher, the above named plaintiffs, have taken an appeal to the Supreme Court of the United States from the final decree of the specially constituted United States District Court, entered herein June 16, 1947, denying the prayer of said plaintiffs that an Order of the Interstate Commerce Commission, dated April 1, 1947, approving an application for merger of the Chesapeake & Ohio Railway Company and the Pere Marquette Railway Company, be enjoined, set aside and annulled; and that the Order allowing said appeal makes the same returnable in the Supreme Court of the United States thirty days from the date hereof.

Dated at Richmond, Virginia, this 22nd day of July, 1947.

(Sgd.) Robert M. Cooper, McFarland and Sellers, 1302 Eighteenth St. N. W., Washington 6, D. C.; (Sgd.) Wm. M. Blackwell, Shewmake, Gary, Hardy & Goddin, State Planters Bank Building, Richmond, Virginia, Counsel for Plaintiffs-Appellants.

[fol. 296] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed July 29, 1947

To the Honorable Clerk of the District Court of the United States for the Eastern District of Virginia:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal in the above-entitled cause, and to include in such transcript the following papers and exhibits:

1. Bill of complaint, including exhibits 1-A, 1-B, 1-C, 2 and 3.
2. Order convening Three-Judge Court.
3. Proxy Statement submitted to Chesapeake and Ohio Railway Company shareholders.
4. Motion to intervene by Chesapeake and Ohio Railway Company, Pere Marquette Railway Company, and Alleghany Corporation.
5. Order allowing such intervention.
6. Motion to intervene by Wellington and Company, et al.
7. Motion to intervene by Sterling, Grace and Company, et al.
8. Order allowing such intervention.
9. Motion to dismiss by Chesapeake and Ohio Railway Company, et al., joined in by the United States of America and Interstate Commerce Commission.
10. Answer of Wellington & Company, et al.
11. Motion to dismiss by Sterling, Grace and Company, et al.
12. Answer of the United States and the Interstate Commerce Commission, if any such answer is a part of the record.
13. Trial proceedings and stenographic transcript of the hearings before this Court.
14. Order denying temporary stay.

[fol. 297] 15. Final judgment entered June 16, 1947.
16. Opinion of this Court.
17. Petition for appeal.
18. Appeal bond.
19. Assignment of errors.
20. Citation on appeal to all parties.
21. Jurisdictional statement.

22. Notice to Attorney General of the Commonwealth of Virginia.
23. Notice to Attorney General of the State of Michigan.
24. Notice under Supreme Court Rule 12, to all parties.
25. Order allowing appeal.
26. Praecipe.

(Sgd.) Robert M. Cooper, McFarland and Sellers, 1302 Eighteenth St. N. W., Washington, D. C.; (Sgd.) Wm. M. Blackwell, Shewmake, Gary, Hardy & Goddin, State Planters Bank Building, Richmond, Virginia, Attorneys for Plaintiffs.

Service of the above and receipt of a copy thereof is hereby admitted this 25th day of July, 1947.

(Sgd.) Edward J. Hickey, Jr., For the United States of America.

Service of the above and receipt of a copy thereof is hereby admitted this 25 day of July, 1947.

(Sgd.) Daniel W. Kunkel, For the Interstate Commerce Commission.

Service of the above and receipt of a copy thereof is hereby admitted this 24 day of July, 1947.

(Sgd.) George D. Gibson, For the Chesapeake and Ohio Railway Company.

[fols. 298-312] Service of the above and receipt of a copy thereof is hereby admitted this 24 day of July, 1947. of counsel on June 4, 1947.

(Sgd.) George D. Gibson, For the Pere Marquette Railway Company.

Service of the above and receipt of a copy thereof is hereby admitted this 24 day of July, 1947

(Sgd.) George D. Gibson, For the Alleghany Corporation.

Service of the above and receipt of a copy thereof is hereby admitted this 25th day of July, 1947.

(Sgd.) John R. Turney, For Wellington & Company, et al.

Service of the above and receipt of a copy thereof is hereby admitted this 25th day of July, 1947.

(Sgd.) Moultrie Hitt, For Sterling, Grace and Company, et al.

[fol. 313] IN UNITED STATES DISTRICT COURT

NOTICE OF CHESAPEAKE & OHIO RAILWAY COMPANY OF FILING OF DESIGNATION OF RECORD ON APPEAL—Filed July 31st, 1947

Please take notice that the undersigned is filing with the Clerk of the District Court of the United States for the Eastern District of Virginia, at Richmond, a designation of additional portions of the record to be included in the record on appeal, a copy of which is attached hereto.

Dated this 30th day of July, 1947.

The Chesapeake and Ohio Railway Company and Alleghany Corporation. By: (s) George D. Gibson, John W. Riely, 1003 Electric Building, Richmond 12, Virginia.

To:

The Attorney General of the United States, Washington, D. C.; Interstate Commerce Commission, Washington, D. C.; Hon. George R. Humrickhouse, Assistant United States Attorney, Richmond, Virginia; John R. Turney, Esq., 1001 15th Street, N. W., Washington 5, D. C., Attorney for Wellington & Company, *et al.*; Moultrie Hitt, Esq., 537 Woodward Building, Washington 5, D. C., Attorney for Sterling Grace and Company; William M. Blackwell, Esq., Shewmake, Gary, Hardy & Goddin, State-Planters Bank Building, Richmond, Virginia, Attorney for Appellants.

[fol. 314] CERTIFICATE OF SERVICE

I hereby certify that I have this day served the annexed Notice of Filing and Counter-Designation of Record upon all counsel to whom said Notice of Filing is directed by causing one copy each of said notice of Filing and Counter-Designation of Record to be deposited in the United States Post Office, postpaid, in envelopes securely sealed and addressed to each of such counsel at his address stated in said Notice of Filing.

(s) John W. Riely, 1003 Electric Building, Richmond 12, Virginia, Attorney for The Chesapeake and Ohio Railway Company and Alleghany Corporation.

Richmond, Virginia, July 31, 1947.

[fol. 315] IN UNITED STATES DISTRICT COURT

DESIGNATION OF CHESAPEAKE & OHIO RAILWAY COMPANY AS TO RECORD ON APPEAL—Filed July 31, 1947

[Title of Court and style of case omitted]

To: The Honorable the Clerk of the District Court of the United States for the Eastern District of Virginia:

You are hereby requested to include in the transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above-entitled cause, the following papers:

1. The Motion to Affirm, filed on behalf of The Chesapeake and Ohio Railway Company and the Alleghany Corporation;

2. This Counter-Designation of Record.

(s) George D. Gibson, John W. Riely, *Attorneys for The Chesapeak and Ohio Railway Company and Alleghany Corporation.*

Hunton, Williams, Anderson, Gay & Moore, 1003 Electric Building, Richmond 12, Virginia, *Of Counsel.*

[fol. 316] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 317] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE RECORD TO BE PRINTED—Filed August 18, 1947

Now come the appellants in the above-entitled cause and, for their statement of points to be relied upon, adopt their Assignment of Errors and state that the entire Record as certified is necessary to be printed for consideration of those points.

Carl McFarland, Robert M. Cooper, Counsel for Appellants, 1302 Eighteenth St., N. W., Washington 6, D. C.; Moultrie Hitt, 537 Woodward Building, Washington 5, D. C., Counsel for Intervenor Appellees, Sterling Grace & Co., et al.; John R. Turney, 1001 Fifteenth St., N. W., Washington 5, D. C., Counsel for Intervenor Appellees, Wellington & Co., et al.

Service of the above statement of points to be relied upon and designation of the Record to be printed is accepted on or before this 14th day of August, 1947. George T. Washington, M. B., Acting Solicitor General, Department of Justice, Washington 25, D. C.; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington 25, D. C.; John W. Riely, Hunton, Williams, Anderson, Gay & Moore, 1003 Electric Building, Richmond 12, Virginia, Counsel for Intervenor Appellees, Chesapeake & Ohio Railway Co., Pere Marquette Railway Co. (Of Counsel on June 4, 1947), and Alleghany Corporation.

[fol. 318] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 258

ALBERT E. SCHWABACHER, et al., Appellants,

vs.

THE UNITED STATES OF AMERICA, et al.

ORDER NOTING PROBABLE JURISDICTION—October 13, 1947.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,488, Eastern Virginia, D. C. U. S., Term No. 258, Albert E. Schwabacher, Albert E. Schwabacher, Jr., James M. Schwabacher, et al., Appellants, vs. The United States of America, Interstate Commerce Commission, et al. Filed August 12, 1947. Term No. 258 O. T. 1947.